

The ***NORTH CAROLINA REGISTER***

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NORTH CAROLINA REGISTER

The *North Carolina Register* is published twice a month and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and notices of public hearings filed under G.S. 150B-21.2 must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions.

The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues. Individual issues may be purchased for eight dollars (\$8.00).

Requests for subscription to the North Carolina Register should be directed to the Office of Administrative Hearings, P. O. Drawer 27447, Raleigh, N. C. 27611-7447.

ADOPTION, AMENDMENT, AND REPEAL OF RULES

The following is a generalized statement of the procedures to be followed for an agency to adopt, amend, or repeal a rule. For the specific statutory authority, please consult Article 2A of Chapter 150B of the General Statutes.

Any agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing (or instructions on how a member of the public may request a hearing); a statement of procedure for public comments; the text of the proposed rule or the statement of subject matter; the reason for the proposed action; a reference to the statutory authority for the action and the proposed effective date.

Unless a specific statute provides otherwise, at least 15 days must elapse following publication of the notice in the *North Carolina Register* before the agency may conduct the public hearing and at least 30 days must elapse before the agency can take action on the proposed rule. An agency may not adopt a rule that differs substantially from the proposed form published as part of the public notice, until the adopted version has been published in the *North Carolina Register* for an additional 30 day comment period.

When final action is taken, the promulgating agency must file the rule with the Rules Review Commission (RRC). After approval by RRC, the adopted rule is filed with the Office of Administrative Hearings (OAH).

A rule or amended rule generally becomes effective 5 business days after the rule is filed with the Office of Administrative Hearings for publication in the North Carolina Administrative Code (NCAC).

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency or before filing with OAH for publication in the NCAC.

TEMPORARY RULES

Under certain emergency conditions, agencies may issue temporary rules. Within 24 hours of submission to OAH, the Codifier Rules must review the agency's written statement of findings of need for the temporary rule pursuant to the provisions in G.S. 150B-21.1. If the Codifier determines that the findings meet the criteria in G.S. 150B-21.1, the rule is entered into the NCAC. If the Codifier determines that the findings do not meet the criteria, the rule is returned to the agency. The agency may supplement its findings and resubmit the temporary rule for an additional review or the agency may resubmit that it will remain with its initial position. The Codifier, thereafter, enters the rule into the NCAC. A temporary rule becomes effective either when the Codifier of Rules enters the rule in the Code or on the sixth business day after the agency resubmits the rule without change. The temporary rule is in effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule may not begin rule-making procedures on the permanent rule at the same time the temporary rule is filed with the Codifier.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of one dollar and 50 cents (\$2.50) for 10 pages or less, plus fifty cents (\$0.15) per each additional page.
- (2) The full publication consists of 53 volumes, totaling in excess of 15,000 pages. It is supplemented monthly by replacement pages. A one year subscription to the publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication are available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. 1:1 NCR 101-201, April 1, 1986 refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

FOR INFORMATION CONTACT: Office of Administrative Hearings, ATTN: Rules Division, P.O. Drawer 27447, Raleigh, North Carolina 27611-7447, (919) 733-2678.

NORTH CAROLINA REGISTER



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NORTH CAROLINA REGISTER

Publication Schedule

(April 1994 - January 1995)

Volume and Issue Number	Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing 15 days from notice	* End of Required Comment Period 30 days from notice	Last Day to Submit to RRC	** Earliest Effective Date
9:1	04/04/94	03/11/94	03/18/94	04/19/94	05/04/94	05/20/94	07/01/94
9:2	04/15/94	03/24/94	03/31/94	05/02/94	05/16/94	05/20/94	07/01/94
9:3	05/02/94	04/11/94	04/18/94	05/17/94	06/01/94	06/20/94	08/01/94
9:4	05/16/94	04/25/94	05/02/94	05/31/94	06/15/94	06/20/94	08/01/94
9:5	06/01/94	05/10/94	05/17/94	06/16/94	07/01/94	07/20/94	09/01/94
9:6	06/15/94	05/24/94	06/01/94	06/30/94	07/15/94	07/20/94	09/01/94
9:7	07/01/94	06/10/94	06/17/94	07/18/94	08/01/94	08/22/94	10/01/94
9:8	07/15/94	06/23/94	06/30/94	08/01/94	08/15/94	08/22/94	10/01/94
9:9	08/01/94	07/11/94	07/18/94	08/16/94	08/31/94	09/20/94	11/01/94
9:10	08/15/94	07/25/94	08/01/94	08/30/94	09/14/94	09/20/94	11/01/94
9:11	09/01/94	08/11/94	08/18/94	09/16/94	10/03/94	10/20/94	12/01/94
9:12	09/15/94	08/24/94	08/31/94	09/30/94	10/17/94	10/20/94	12/01/94
9:13	10/03/94	09/12/94	09/19/94	10/18/94	11/02/94	11/21/94	01/01/95
9:14	10/14/94	09/23/94	09/30/94	10/31/94	11/14/94	11/21/94	01/01/95
9:15	11/01/94	10/11/94	10/18/94	11/16/94	12/01/94	12/20/94	02/01/95
9:16	11/15/94	10/24/94	10/31/94	11/30/94	12/15/94	12/20/94	02/01/95
9:17	12/01/94	11/07/94	11/15/94	12/16/94	01/03/95	01/20/95	03/01/95
9:18	12/15/94	11/22/94	12/01/94	12/30/94	01/17/95	01/20/95	03/01/95
9:19	01/03/95	12/08/94	12/15/94	01/18/95	02/02/95	02/20/95	04/01/95
9:20	01/17/95	12/21/94	12/30/94	02/01/95	02/16/95	02/20/95	04/01/95

This table is published as a public service, and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2B .0103 and the Rules of Civil Procedure, Rule 6.

* An agency must accept comments for at least 30 days after the proposed text is published or until the date of any public hearing, whichever is longer. See G.S. 150B-21.2(f) for adoption procedures.

** The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule above, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st business day of the next calendar month.

EXECUTIVE ORDER NO. 44
NORTH CAROLINA COMMISSION ON
BUSINESS LAWS AND THE ECONOMY

WHEREAS, the State of North Carolina is committed to the development of a strong economy for the people of the State, to increasing the ability of North Carolina's people, communities, and enterprises to compete successfully in an increasingly competitive marketplace, and to insuring the long-term economic prosperity and quality of life for the citizens of the State; and

WHEREAS, businesses exist in a complicated legal environment which can be unduly restrictive and hinder their ability to operate and grow and which can discourage new businesses from locating in the State; and

WHEREAS, there is currently no state government organization, board or commission dedicated exclusively to a comprehensive study of state statutes, court opinions, and agency rules and regulations affecting the operation of business for the purposes of (1) ensuring that existing statutes, rulings, rules and regulations are supportive of sound purposes, are meaningful in light of changing business and legal environments, and are necessary and relevant and (2) determining whether new statutes, rules and regulations may be needed to help assure that North Carolina maintains a legal environment which provides the flexibility and support to allow businesses to operate successfully in this state and to attract them to locate here; and

WHEREAS, building the long-term economic capacity for the people, communities, and enterprises of North Carolina requires concerted, coordinated and cooperative effort by those who determine state laws and regulations and those who work in private enterprise and bear the responsibility of operating businesses in the State consistent with said laws, rules and regulations;

NOW, THEREFORE, by the power vested in me as Governor by the laws and Constitution of the State of North Carolina, **IT IS ORDERED:**

Section 1. Establishment and Composition.

The North Carolina Commission on Business Laws and the Economy is hereby established. The Commission shall be composed of twenty-three members appointed by the Governor as follows:

- (a) Nine members representing public and

private corporations.

- (b) Four practicing attorneys in the State of North Carolina, one of whom shall serve as Reporter for the Commission.
- (c) One member of the North Carolina House of Representatives.
- (d) One member of the North Carolina State Senate.
- (e) One representative from North Carolina Universities.
- (f) One member of the North Carolina Economic Development Board.
- (g) One representative of the Business Section of the North Carolina Bar Association.
- (h) One representative of the North Carolina Citizens for Business and Industry.
- (i) The Secretary of State, or his designee.
- (j) The Attorney General, or his designee.
- (k) The Lieutenant Governor, or his designee.
- (l) The Secretary of the Department of Commerce, or his designee.

Members shall serve at the pleasure of the Governor. The Attorney General shall serve as Chair of the Commission.

Section 2. Purposes and Duties.

The purposes of the Commission are to recommend to the North Carolina General Assembly any needed changes in existing statutes and regulations which affect the operation of businesses in North Carolina, particularly Chapter 55 of the North Carolina General Statutes entitled "The North Carolina Business Corporation Act," and to recommend any needed new statutes, rules and regulations designed to assure that North Carolina offers a legal environment which provides the flexibility and support to allow businesses to operate successfully in this state and which will attract them to locate and incorporate here. The first report of the Commission shall be presented to the Governor and to the 1995 session of the General Assembly for their consideration.

The Commission shall, in the performance of its duties:

- (a) Gather and study such data and information as may be necessary and useful for accomplishing the purposes of this Commission.
- (b) Work cooperatively with other boards, commissions, and entities and take maximum advantage of their resources and activities that can provide useful information and insight to the purposes of

this Commission.

- (c) Prepare an annual report on its findings and recommendations for presentation to the Governor and the General Assembly.

Section 3. Meetings.

The Commission shall meet at least once each quarter and may hold special meetings at any time at the call of the Chair.

Section 4. Expenses.

Commission members representing the business, professional and academic communities shall receive no per diem or expenses in connection with the work of the Commission. The expenses of Commission members representing state agencies shall be paid by their respective agencies pursuant to N.C.G.S. 138-5. Expenses incurred by the Commission in connection with meetings and the preparation therefor shall be paid from the budget of the North Carolina Department of Commerce. Administrative and staff support for the Commission shall be provided by the North Carolina Attorney General.

The Commission is authorized to accept grants, gifts, bequests, and other offers of assistance necessary to carry out its tasks and functions. Also, each state agency cooperating in the work of the Commission may provide additional funds from its own budget to support the Commission.

This Executive Order shall be effective immediately.

Done in the Capital City of Raleigh, North Carolina, this the 19th day of April, 1994.

EXECUTIVE ORDER NO. 45 GOVERNOR'S INITIATIVE TO STRENGTHEN NORTH CAROLINA HISTORICALLY BLACK COLLEGES AND UNIVERSITIES

By the authority vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED:**

Section 1. Establishment.

There shall be established the Governor's Initiative to Strengthen North Carolina Historically Black Colleges and Universities, to advance the development of human potential, to enhance the capacity of Historically Black Colleges and Universities (HBCUS), to provide quality education

and to increase opportunities to participate in and benefit from federal and state financially assisted programs.

Section 2. Advisory Council.

(a) The Governor's Advisory Council on North Carolina Historically Black Colleges and Universities is hereby established. For organizational purposes, the Council shall be placed in the Office of the Special Assistant to the Governor. The Advisory Council shall issue an annual report to the Governor on participation by agencies with HBCUS. The Council shall also provide advice to the Special Assistant.

(b) The members of the Council shall be appointed by the Governor. The Council shall include representatives of HBCUS, other institutions of higher education, business and financial institutions and private foundations. The Council shall be composed of 12 members. One-half of the members shall serve initial terms of two years and one-half shall serve initial terms of four years. Thereafter, terms shall be for four years.

(c) The Office of the Special Assistant shall provide staff assistance to the Advisory Council and assist the Governor as liaison between the departments and agencies of state government and HBCUS.

Section 3. Procedure.

(a) To carry out the purposes of this Order, each state department or agency designated by the Governor shall, consistent with applicable law, enter into appropriate contracts, grants, or cooperative agreements with HBCUS. The head of each department or agency subject to this Order shall establish an annual goal for the amount of financial assistance to be awarded in contracts, grants, or cooperative agreements to HBCUS. The goal shall be an amount equal to or above the actual amount of such awards from the previous fiscal year, with effort being made to increase assistance to HBCUS. To facilitate the attainment of the goals established, departments or agencies subject to this Order shall provide technical assistance and information to HBCUS regarding the agency's programs and the preparation of applications or proposals for grants, contracts or cooperative agreements.

(b) Each designated department or agency shall appoint a senior official, who is a full-time employee of state government and who is responsible for management or program administration, to report directly to the department or agency head, or his or her designee, and to

serve as liaison to the Council and the Office of Special Assistant.

(c) Each designated department or agency shall develop and document an annual plan for the agency's effort to increase the ability of HBCUS to participate in state and federally sponsored programs. These plans shall describe the objectives for proposed agency actions to fulfill this Order and shall be submitted at such time and in such form as the Governor shall designate. In consultation with participating agencies, the Special Assistant and the Council shall review these plans and include their findings in the yearly report to the Governor.

(d) The designated state departments or agencies will examine unintended or arbitrary barriers, determine the adequacy of the dissemination of information on programmatic and financial opportunities of interest to the HBCUS and identify ways of assuring equity and fairness.

(e) In its yearly report to the Governor, the Council shall relate the progress achieved in enhancing the role and capabilities of HBCUS, including findings and recommendations on the Annual Performance Reports. The report also shall advise the Governor on how to increase the private sector's role in strengthening HBCUS. Particular emphasis shall be placed on enhancing institutional infrastructure and on facilitating planning, development and the use of new technology to ensure long-term viability and growth. The Special Assistant shall disseminate the annual report to members of the General Assembly, Council of State and Cabinet and seek to ensure that findings of the Council are taken into account in the policies and actions of every designated department or agency.

(f) The Office of the Special Assistant, along with other state departments and agencies, shall work to encourage the private sector to assist HBCUS through increased use of such devices and activities as:

- (1) private sector matching funds to support increased endowments, and
- (2) private sector expertise to facilitate the development of more effective ways to manage finances, improve information management, strengthen facilities and improve course offerings.

(g) The Governor's Advisory Council through the Governor's HBCUS Initiative, shall provide advice on how HBCUS can achieve greater financial security. The Council shall consider how such institutions can enlist the resources and experience of the private sector to achieve such

security.

(h) In consultation with the State Personnel Director and the Governor's Director of Personnel, the Special Assistant shall develop a program to improve recruitment and participation of graduates and undergraduate students of HBCUS in part-time, temporary, intern, and permanent positions in state government.

Section 4. Administration.

(a) Members of the Governor's Advisory Council shall serve without compensation, but shall be allowed travel expenses, as available.

(b) The Office of the Special Assistant shall provide such administrative services for the Council as may be required.

Section 5. Effect on Prior Orders.

Executive Order Number 24 of the Martin Administration is hereby rescinded.

This Executive Order shall become effective immediately.

Done in Raleigh, North Carolina, this the 20th day of April, 1994.

This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.

APPLICATION FOR VARIANCE TO 29 CFR 1910.219(a)(3)

Submitted by: Mary C. McCormac on behalf of Pilot Hosiery Mills, Inc., 224 East Main Street, Pilot Mountain, North Carolina 27041. Request submitted for a permanent variance to 29 CFR 1910.219(a)(3) as incorporated by reference in 13 NCAC 07E.0101(a). The North Carolina adopted standard, 29 CFR 1910.219, is identical to the federal standard.

Description of Operations: Pilot Hosiery Mills, Inc. employs 33 employees at the Pilot Mountain facility. The company is owned and operated by Walter B. Thomas and David Thomas. Five knitters on two shifts operate 84 Scott and Williams Komet sock knitting machines. These 84 machines were built circa 1940 and are powered by a drive shaft which transmits energy to each machine via a belt and pulley system. Pilot Hosiery Mills, Inc., employs five fixers to perform servicing and maintenance on the 84 machines.

29 CFR 1910.219(a)(3) requires a guard for the side and face sections of nip-point belts and pulleys for the mechanical power transmission apparatus on each of the 84 Scott and Williams Komet knitting machines. Commercially manufactured guards for said machines do not exist. Pilot Hosiery Mills, Inc., did design and manufacture guarding to cover the drive belts and pulleys on the machines which are described in detail and pictured in Attachment B of the original application submitted to Division of Occupational Safety and Health of the North Carolina Department of Labor. The original application is available for public inspection at the offices of the Division of Occupational Safety and Health, North Carolina Department of Labor.

Safety Aspects of Variance Request: Pilot Hosiery Mills, Inc., has taken the following actions:

- (1) retrained all knitters and fixers concerning the importance of working safely near the belts and pulleys;
- (2) prohibited knitters and fixers from wearing loosely fitted clothing or jewelry which might get caught and pull an employee into the belt and pulley system;
- (3) instructed employees concerning the correct actions to take if an employee is ever "nipped" by the belts and pulleys;
- (4) prohibited employees from entering the drive shaft alley while the drive shaft is in operation [Note: The belt and pulley system cannot operate when the drive shaft is not operating.];
- (5) instructed all other employees not to enter any area where they might come into contact with a Scott and Williams Komet belt and/or pulley;
- (6) implemented installation of self-designed guards on each of the 84 Scott and Williams Komet knitting machines which will provide additional safeguards to employees.

Certification to Employees: Pilot Hosiery Mills, Inc. has certified that a "Notice of Posting" was placed in an area visible to all employees regarding the application for a permanent variance to 29 CFR 1910.219(a)(3). Said Notice included a copy of the entire submission by Pilot Hosiery Mills, Inc., for the variance to 29 CFR 1910.219(a)(3).

Pilot Hosiery Mills, Inc., shall post this notice in a conspicuous place or places where notices to employees are customarily posted. Verification of such posting shall be provided to the Division of Occupational Safety and Health.

Interim Order: An interim order was issued by the Commissioner of Labor to Pilot Hosiery Mills, Inc., on January 24, 1994, granting an interim variance which shall remain effective until a decision is rendered on the application for a permanent variance.

Request for Public Hearing: Any employer or employee affected by this application may submit written data, views or arguments regarding this application and may request a public hearing on this application by submitting a written petition pursuant to the rules as set out in 13 NCAC 07A.0711. All data and requests for public hearings must be submitted in writing to Jill F. Cramer, Division of Occupational Safety and Health, North Carolina Department of Labor, 413 N. Salisbury Street, Raleigh, North Carolina 27603. The deadline for submission of a petition for a public hearing is May 31, 1994. If no requests are received within the specified time period, a final order will be issued to Pilot Hosiery Mills, Inc., pursuant to this application for a permanent variance to 29 CFR 1910.219(a)(3), on or before June 15, 1994.

STATE OF NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION
POST OFFICE BOX 29535
RALEIGH, NORTH CAROLINA 27626-0535

PUBLIC NOTICE OF INTENT TO ISSUE STATE GENERAL
NPDES PERMITS

Public notice of intent to issue State National Pollutant Discharge Elimination System (NPDES) General Permits for Point Source Discharges of Stormwater associated with the following activities:

1. NPDES General Permit No. NCG160000 for stormwater point source discharges associated with activities classified as Asphalt Paving Mixtures and Blocks [Standard Industrial Classification Code (SIC) 2951]. This General Permit is applicable to stormwater discharges from industrial activities at those facilities as described above. Also included in this General Permit are stormwater discharges from those areas at the facilities described above which are used for vehicle maintenance activities.

2. NPDES General Permit No. NCG170000 for stormwater point source discharges associated with activities classified as Textile Mill Products [Standard Industrial Classification Code (SIC) Major Group 22]. This General Permit is applicable to stormwater discharges from exposed material handling equipment or activities, raw materials, intermediate products, final products, waste materials, byproducts, or industrial machinery at those facilities as described above. Also included in this General Permit are stormwater discharges from those areas at the facilities described above which are used for vehicle maintenance activities.

3. NPDES General Permit No. NCG180000 for stormwater point source discharges associated with activities classified as Furniture and Fixtures [Standard Industrial Classification Code (SIC) 25]. This General Permit is applicable to stormwater discharges from industrial activities at those facilities described above where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, byproducts, or industrial machinery are exposed to stormwater. Also included in this General Permit are stormwater discharges from those areas at the facilities described above which are used for vehicle maintenance activities.

4. NPDES General Permit No. NCG190000 for stormwater point source discharges associated with activities classified as Ship and Boat Building and Repairing [Standard Industrial Classification Code (SIC) 373] and Marinas (SIC 4493). This General Permit is applicable to stormwater discharges from industrial activities at those facilities described above as Marinas where vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication) and equipment cleaning operations occur and from industrial activities at those facilities described above as Ship and Boat Building and Repairing.

On the basis of preliminary staff review and application of Article 21 of Chapter 143 of the General Statutes of North Carolina, Public Law 92-500 and other lawful standards and regulations, the North Carolina Environmental Management Commission proposes to issue State NPDES General Permits for the discharges as described above.

INFORMATION: Copies of the draft NPDES General Permits and Fact Sheets concerning the draft Permits are available by writing or calling:

Jeanette Briggs
Water Quality Section
N.C. Division of Environmental Management
P.O. Box 29535
Raleigh, North Carolina 27626-0535
Telephone (919) 733-5083

IN ADDITION

Persons wishing to comment upon or object to the proposed determinations are invited to submit their comments in writing to the above address no later than June 15, 1994. All comments received prior to that date will be considered in the final determination regarding permit issuance. A public meeting may be held where the Director of the Division of Environmental Management finds a significant degree of public interest in any proposed permit issuance.

The draft Permits, Fact Sheets and other information are on file at the Division of Environmental Management, 512 N. Salisbury Street, Room 925-B, Archdale Building, Raleigh, North Carolina. They may be inspected during normal office hours. Copies of the information of file are available upon request and payment of the costs of reproduction. All such comments and requests regarding these matters should make reference to the draft Permit Numbers, NCG160000, NCG170000, NCG180000, or NCG190000.

Date 5/2/94

David A. Goodrich
for/A. Preston Howard, Jr., P.E., Director
Division of Environmental Management

**TITLE 12 - DEPARTMENT
OF JUSTICE**

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Justice, State Bureau of Investigation intends to amend rules cited as 12 NCAC 4E .0402 and 4G .0102.

The proposed effective date of this action is August 1, 1994.

The public hearing will be conducted at 9:00 a.m. on May 31, 1994 at the Division of Criminal Information, 407 N. Blount Street, Raleigh, North Carolina 27601.

Reason for Proposed Action:

12 NCAC 4E .0402 - This Rule change is being made to be more responsive to our User's training needs as well as to prepare for changes in the Federal NCIC program.

12 NCAC 4G .0102 - This Rule change is being made to conform the penalty provisions to the amended changes contained in 12 NCAC 4E .0402.

Comment Procedures: Comments may be submitted in writing, or may be presented orally at the public hearing. Written comments should be submitted to E.K. Best, Division of Criminal Information, 407 N. Blount Street, Raleigh, North Carolina 27601, by June 15, 1994.

**CHAPTER 4 - DIVISION OF
CRIMINAL INFORMATION**

**SUBCHAPTER 4E - ORGANIZATIONAL
RULES AND FUNCTIONS**

**SECTION .0400 - DCI TERMINAL
OPERATOR**

**.0402 CERTIFICATION AND
RE-CERTIFICATION OF
DCI OPERATORS**

(a) ~~Authorized agency personnel, who are assigned the duty of operating the DCI terminal, shall be certified by DCI within 120 days of employment with certification renewed at least every 24 months.~~

(b) ~~DCI issues three types of certification:~~

(1) ~~"Full certification" certifies a person with the ability and knowledge to use those programs which are developed and administered by DCI for local law enforcement and criminal justice agencies. To obtain an initial full certification, authorized personnel must attend not less than 28 hours of instruction concerning the proper use and control of information obtained from a DCI terminal;~~

(2) ~~"Re-certification" renews a full certification at least every 24 months after the initial certification is issued. Re-certification may be obtained by attending the two day re-certification class if initial certification has not expired or if an individual has obtained a 30 day extension. If the initial certification has expired, he/she must attend the entire initial certification classroom instruction. An individual may retain his original certification date if re-certification class is attended up to 90 days prior to the expiration date; and~~

(3) ~~"In-service certification" certifies and/or re-certifies a person through an in-service training program provided by his department. In order for an agency to obtain an "In-service Certification Program", the agency must submit a written proposal to DCI outlining the certification program to be provided to its personnel. DCI personnel and the Advisory Policy Board will review the proposal and provide a written response of approval or denial. If the program is approved, a copy of the lesson plans, a list of personnel certified through such program, transaction codes to be authorized by terminal, and other information relating to the program shall be provided to DCI. The instructor for the agency must complete the law enforcement instructor certification course.~~

(c) ~~Enrollment will be necessary in order for DCI instructors to admit a student in a DCI certification or re-certification class. Enrollment procedures shall be as follows:~~

(1) ~~A search of the certification class files shall be performed to determine whether a class has any vacancies;~~

(2) ~~If there is a vacancy, an enrollment form signed by the department head, or when applicable, by a communications supervisor, which lists the individuals to be enrolled in the specific training class shall be submitted to DCI no later than five working days before the class is scheduled to begin. If for some reason all personnel cannot be accommodated, DCI will promptly contact the department head or supervisor with an explanation of why all personnel cannot be accommodated in the class requested;~~

(3) ~~A search of the certification class files shall be performed by the agency enrolling personnel to verify that the requested personnel have been enrolled in the class requested; and~~

(4) ~~Late enrollment may be made by the department head or when applicable, by a communications supervisor, by either sending a switch message to terminal PIH or by faxing a copy of a properly completed late enrollment form to DCI via phone number (919) 733-8378. Late enrollment by switch message must include the name and social security number of personnel to be enrolled in the class. Employees should not be sent to class until a confirmation of receipt and space availability has been received from DCI. The employee must bring a completed enrollment form signed by the agency head or when applicable, by the communications supervisor, to class if the enrollment is by switch message.~~

(d) ~~New personnel hired or personnel newly assigned the duties of a terminal operator shall receive an indoctrination and hands on training on the basic functions and terminology of the DCI system by their own agency prior to attending certification class. Such personnel may operate a terminal accessing DCI while obtaining indoctrination if such personnel are directly supervised by a certified operator.~~

(e) ~~Following the instruction on full certification, in service certification or re-certification classes, a test will be administered and a minimum grade of 80 percent must be attained in order for a person to become operator certified.~~

(f) ~~DCI will notify the employee's supervisor of the grade attained. If 80 percent or more has been attained, the employee is certified upon receipt of notice whether verbal or written.~~

(g) ~~Any agency which allows an individual to operate a terminal or interface terminal accessing DCI who is not certified or who is not within the 120 day training period and directly supervised by a certified operator will be in violation of this Rule and subject to the provisions of Subchapter 4G Rule .0102(b) of this Chapter.~~

(h) ~~Any agency personnel using a certified operator's identifier other than their own to gain access to DCI and violating a DCI procedure will be in violation of this Rule and subject to the provisions of Subchapter 4G Rule .0102(e) of this Chapter.~~

(a) Authorized agency personnel, who are assigned the duty of operating a DCI terminal or who operate a terminal accessing DCI via an approved interface shall be certified within 120 days from employment or assignment to terminal operation duties. Certification is to be awarded based on achieving a test score of 80 percent or greater. Recertification is required every 24 months and can be obtained any time 90 days prior to expiration. Certification and recertification is available by the following method:

"Specialized Certification" certifies and recertifies an operator through a specialized training program provided by employing agency or a host interface agency that provides computer access to DCI. Approval for a "Specialized Certification Program" will be based upon special training needs that are not met by the "General Certification Program" or the cost effectiveness for both the user agency and DCI. Agencies wanting to adopt a specialized program must submit a written proposal to DCI outlining the program to be provided to its personnel. The proposal must be submitted in standard format as required by DCI which includes: types of participants, course content, implementation methods, instructional methods, and program coordinator duties. DCI personnel will review the proposal and provide a written response of approval or denial. If the proposal is denied, the agency may request an appeal hearing before the Advisory Policy Board. If the proposal is approved, the program coordinator must submit training documentation to DCI for approval to meet DCI/NCIC training standards and policies. The instructor for each approved "Specialized Certification Program" must have

successfully completed the North Carolina Law Enforcement Instructor Certification Course and must maintain an active DCI "General Certification" which includes all modules being offered in the "Specialized Certification Program". Recertification can be obtained by challenging and passing the approved "Specialized Certification Test" or by attending and passing classes as specified in the agency's approved "Specialized Certification Program".

(b) Enrollment will be necessary for student attendance to any training or testing class for DCI operators. Enrollment will be requested and approved by the agency head or where applicable a communications supervisor of an authorized agency as defined in 12 NCAC 4E .0201 and .0202 and personnel must meet the management control requirements outlined in 12 NCAC 4E .0200. DCI will maintain enrollment for all "General Certification" classes and the administering agency will maintain enrollment for each "Special Certification" program. Enrollment shall be done on a form or such automated method provided by DCI. The enrollment procedure for "Special Certification" will be defined within the approved plan and be responsive to the students needs which it serves. The enrollment procedure for General Certification or Recertification are:

- (1) A search of the training or testing class files shall be performed by the enrolling agency to determine whether a class has any vacancies.
- (2) If there is a vacancy, the enrollment will be entered into the class enrollment file in a manner prescribed by DCI.
- (3) The enrolling agency must insure the student has been accepted in class prior to sending them to class.
- (4) When classes become full, DCI is to assist agencies enroll their personnel by establishing waiting lists, identifying alternative classes or if the demand warrants, establish an additional class.
- (5) All enrollments must be accepted by DCI at least two work days prior to the training or test class.
- (6) A copy of each enrollment must be signed by the Agency Head, or applicable communication's supervisor, and maintained on file for two years by the enrolling agency. This document is subject to inspection by repre-

sentatives of the Division as reasonable times.

(c) New personnel hired or personnel newly assigned to duties of a terminal operator shall receive an indoctrination and hands-on training on the basic functions and terminology of the DCI system by their own agency prior to attending certification class. Such personnel may operate a terminal accessing DCI while obtaining indoctrination if such personnel are directly supervised by a certified operator and are within the 120 day training period.

(d) Any individual who's certification has expired may be allowed to retest as a recertification student up to 90 days after their expiration. The individual will not be able to operate the terminal during the time between expiration and passing the recertification test(s). Any individual who's certification has expired more than 90 days will be required to attend and successfully complete training classes.

(e) Any agency which allows an individual to operate a terminal accessing DCI who is not certified or who is not within the 120 day training period and directly supervised by a certified operator will be in violation of this Rule and subject to the provisions of Subchapter 4G Rule .0102(b) of this Chapter.

(f) Any agency personnel using a certified operator's identifier other than their own to gain access to DCI and violating a DCI procedure or for the purpose of concealing their identity will be in violation of this Rule and subject to the provisions of Subchapter 4G Rule .0102(c) of this Chapter.

(g) When a DCI certified operator leaves the employment of their agency, the Agency Head will notify DCI within 24 hours. This notification is to allow DCI to immediately remove that operator's identification in the network until such time as they are employed by another authorized agency.

Statutory Authority G.S. 114-10; 114-10.1.

SUBCHAPTER 4G - PENALTIES AND ADMINISTRATIVE HEARINGS

SECTION .0100 - DEFINITIONS AND PENALTY PROVISIONS

.0102 PENALTY PROVISIONS

(a) Insecure location of DCI terminal pursuant to 12 NCAC 4F .0101 shall result in the following penalties:

- (1) First Offense - Agency Penalty (Warning) with conditions that the terminal be secured within 48 hours;
- (2) Second Offense - Agency Penalty (Reprimand) with conditions that the SBI Assistant Director for DCI and the agency head must establish an agreed time period within which the terminal can be secured; and
- (3) Third Offense - Agency Penalty (Suspension) resulting in suspended access to computerized criminal history and drivers history data until the terminal is secured.

(b) Uncertified operator pursuant to 12 NCAC 4E .0402 shall result in the following penalties:

- (1) First Offense - Agency Penalty (Reprimand);
- (2) Second Offense - Agency Penalty (Probation) and limited operational time;
- (3) Third Offense - Agency Penalty (Suspend Services) with full service removed for six months from the date of the hearing and probation extended for one year from date of reinstatement; and
- (4) Fourth Offense - Agency Penalty (Suspend Services) resulting in the removal of the terminal.

(c) Unauthorized use of a DCI certified operator identifier pursuant to 12 NCAC 4E .0402 shall result in the following penalty:

First Offense - Individual Penalty (Revocation) and/or seek criminal prosecution under any applicable state or federal law for unauthorized access to a computer system.

(d) Transmission of non-criminal justice related information over a DCI terminal pursuant to 12 NCAC 4F .0102 shall result in the following penalties:

- (1) First Offense - Individual Penalty (Warning);
- (2) Second Offense - Individual Penalty (Probation) and Agency Penalty (Warning) if on same operator;
- (3) Third Offense - Individual Penalty (Suspended Certification) and Agency Penalty (Reprimand) if on the same operator as a second offense; and
- (4) Fourth Offense - Individual Penalty (Revocation) and Agency Penalty (Probation) if on the same operator as a third offense.

(e) Failure by the original servicing agency (agency with direct access) to comply with the penalties that are placed upon the non-terminal (indirect access) agency pursuant to 12 NCAC 4E .0203 shall result in the following penalty:

First and Subsequent Offenses - The servicing agency (agency providing direct access) will receive the same penalty that should have been imposed upon the non-terminal (indirect access) agency.

(f) Dissemination of driver's history by a certified operator to an unauthorized requestor pursuant to 12 NCAC 4F .0701 shall result in the following penalties:

- (1) First Offense - Individual Penalty (Probation);
- (2) Second Offense - Individual Penalty (Suspension) and Agency Penalty (Warning); and
- (3) Third Offense - Individual Penalty (Revocation).

(g) Unauthorized use of driver's history by authorized personnel other than a certified operator pursuant to 12 NCAC 4F .0701 shall result in the following penalties:

- (1) First Offense - Agency Penalty (Warning) with the agency submitting a written response to the SBI/DCI of a plan and date by which departmental training is complete to prevent further violations of this Rule;
- (2) Second Offense - Agency Penalty (Reprimand); and
- (3) Third Offense - Agency Penalty (Suspension) of driver's history for six months.

(h) Failure (if entire agency is more than 10 percent deficient) to maintain a log of dissemination on "positive" driver's histories obtained through DCI for a period of one year from the date the record was received pursuant to 12 NCAC 4F .0701 shall result in the following penalties:

- (1) First Offense - Individual Penalty (Warning) to each operator that contributed with a re-audit after 90 days;
- (2) Second Offense - Individual Penalty (Probation) and Agency Penalty (Warning);
- (3) Third Offense - Individual Penalty (Suspension of Certification) and Agency Penalty (Reprimand); and

- (4) Fourth Offense - Individual Penalty (Revocation) and Agency Penalty (Probation).

(i) Failure to utilize the proper CCH message key in accessing III whether or not resulting in an unauthorized dissemination pursuant to 12 NCAC 4F .0401, .0402, .0404, .0405, and .0407 shall result in the following penalties:

- (1) First Offense - Individual Penalty (Warning) with condition of agency re-audit after 90 days;
- (2) Second Offense - Individual Penalty (Probation) with the agency submitting a written response to the SBI/DCI of a plan and date by which training is complete to prevent further violations of this Rule;
- (3) Third Offense - Individual Penalty (Suspension of Certification) and Agency Penalty (Reprimand); and
- (4) Fourth Offense - Individual Penalty (Revocation).

(j) Improper use of CCH data in denial or revocation of a license or permit pursuant to 12 NCAC 4F .0406 shall result in the following penalties:

- (1) First Offense - Agency Penalty (Reprimand);
- (2) Second Offense - Agency Penalty (Probation);
- (3) Third Offense - Agency Penalty (Suspension of Services) with access suspended to computerized criminal history non-criminal justice purposes for a period of six months; and
- (4) Fourth Offense - Agency Penalty (Suspension of Services) with access suspended to computerized criminal history non-criminal justice purposes for one year. After one year of suspension the agency must seek reinstatement by appearing before the Advisory Policy Board.

(k) Dissemination of CCH by a certified operator for an unauthorized purpose or to an unauthorized requestor pursuant to 12 NCAC 4E .0203; 4F .0401, .0404, .0405, and .0407 shall result in the following penalties:

- (1) First Offense - Individual Penalty (Probation);
- (2) Second Offense - Individual Penalty (Suspension of Certification) and Agency Penalty (Warning); and
- (3) Third Offense - Individual Penalty (Revocation).

(l) Unauthorized use or dissemination of CCH by authorized personnel other than the certified operator pursuant to 12 NCAC 4F .0401, .0404, .0405, and .0407 shall result in the following penalties:

- (1) First Offense - Agency Penalty (Reprimand) with the agency submitting a written response to the SBI/DCI of a plan and date by which training is complete to prevent further violations of this Rule with a re-audit to be conducted 90 days after training is complete;
- (2) Second Offense - Agency Penalty (Suspension) of CCH services for a period of 90 days; and
- (3) Third Offense - Agency Penalty (Suspension) of CCH services for a period of six months.

(m) Failure (if the entire agency is more than 10 percent deficient) to log all of the required fields on the CCH dissemination log pursuant to 12 NCAC 4F .0401 shall result in the following penalties:

- (1) First Offense - Individual Penalty (Warning) with a re-audit after 90 days;
- (2) Second Offense - Individual Penalty (Probation) and Agency Penalty (Warning);
- (3) Third Offense - Individual Penalty (Suspension of Certification) and Agency Penalty (Reprimand); and
- (4) Fourth Offense - Agency Penalty (Probation).

(n) Failure (if the entire agency is more than 10 percent deficient) to maintain a log of dissemination on "positive" criminal history record information obtained through DCI for a period of one year from the date the record was received pursuant to 12 NCAC 4F .0401 shall result in the following penalties:

- (1) First Offense - Individual Penalty (Warning) to each operator that contributed and an Agency Penalty (Warning) with re-audit after 90 days;
- (2) Second Offense - Individual Penalty (Probation) and an Agency Penalty (Reprimand) with the agency head submitting a letter to DCI on a monthly basis (for 12 consecutive months) verifying that a self audit has been conducted. Failure to submit this verification letter will be

considered a breach of the users agreement; and

- (3) Third Offense - Individual Penalty (Suspension of Certification) and an Agency Penalty (Suspension of Services) suspending CCH for six months.

(o) Failure of the agency maintaining management control over the certified operator to notify SBI/DCI of the employee's resignation or termination of employment pursuant to 12 NCAC 4E .0402 (g):

- (1) First Offense - Agency Penalty (Warning) with condition of agency reaudit after 90 days;
- (2) Second Offense - Agency Penalty (Reprimand) with condition of agency re-audit after 90 days;
- (3) Third Offense - Agency Penalty (Probation); and
- (4) Fourth Offense - Agency Penalty (Suspended Service).

Statutory Authority 114-10; 114-10.1.

TITLE 13 - DEPARTMENT OF LABOR

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Labor, Mine and Quarry Division intends to amend rules cited as 13 NCAC 6 .0305, .0402, .0501, .0507, .0510, .0515 - .0516, .0519, .0521 - .0522, .0525 - .0526; repeal .0505, .0511 - .0512 and .0520.

The proposed effective date of this action is August 1, 1994.

The public hearing will be conducted at 9:30 a.m. on June 16, 1994 at the Agriculture Building, Room 359, 1 West Edenton Street, Raleigh, N.C. 27601.

Reason for Proposed Action: To update the state Mine and Quarry regulations so that they are consistent with the Federal mining regulations.

Comment Procedures: In order to allow the department sufficient time to review and evaluate your written comments, please submit your com-

ments to Mr. Scott Templeton, APA Coordinator, Department of Labor, 4 West Edenton Street, Raleigh, N.C. 27601, fax (919) 733-6197, telephone (919) 733-0368 by June 6, 1994. At the latest, we must receive your written comments by June 15, 1994, except you may present written comments at the hearing. Oral comments may also be presented at the hearing; however, time limits may be imposed by the chair.

CHAPTER 6 - MINE AND QUARRY

SECTION .0300 - PROCEDURES

.0305 ACCIDENT AND ILLNESS RECORDS

(a) Reporting Required. Following the occurrence of any work-related accident (including those listed in Rule .0304(a) of this Section), work-related illness, or work-related injury (other than a minor first-aid case), the operator shall complete a Mine Injury or Illness Report, Form MAQD-9 (or ~~Bureau of Mines Form 6-1555~~ or ~~MESA Form 3000~~ Mine Safety and Health Administration (MSHA) Form 7000-1). The report form shall include the following information: the name and address of the operator; the location of the mine; a description of the circumstances of the accident, injury or illness; location of the accident within the mine; the name and job title of the ill or injured person; and the total number of lost workdays.

(b) Report to Director. The operator shall mail or fax one copy of the form to the director within 10 calendar days of the occurrence of the accident, illness, or injury. If the form is faxed, a copy of the form must also be mailed to the director within 24 hours.

(c) Maintenance of Records. The operator shall maintain one copy of each form at the mine or nearest mine office for at least one year and shall upon request make the record available for examination by ~~an~~ a ~~inspector~~ representative of the Division.

Statutory Authority G.S. 74-24.13; 95-4(2).

SECTION .0400 - GENERAL MINE STANDARDS

.0402 FEDERAL MANDATORY STANDARDS

(a) The commissioner has adopted and will enforce the mandatory provisions of the Metal and Nonmetal Mine Health and Safety Standards,

~~October July, 1974 1992 edition, including subsequent amendments and editions August, 1976 Revision[30 C.F.R. Chapter 1, Parts 55, 56, and 57, (1976)] as amended by 42 Federal Register 7002 7011, 29418 29425 and 57038 57044, which have been promulgated by the Mining Enforcement and Safety Administration of the United States Department of the Interior and 43 Federal Register 54065 54067, 44 Federal Register 31916 31920, 48514 48545, and 53704, which have been promulgated by the Mine Safety and Health Administration of the United States Department of Labor.~~

(b) Copies of the standards may be obtained from the ~~Metal and Nonmetal Mine Safety and Health Division, Mine Safety and Health Administration, United States Department of Labor, Ballston Tower #3, 4015 Wilson Boulevard, Arlington, Virginia 22203 U.S. Government Printing Office, Superintendent of Documents, Post Office Box 371954, Pittsburgh, Pennsylvania 15250-7954.~~ Copies of the standards are also available for inspection and purchase at the offices of the mine Mine and quarry Quarry Division.

Statutory Authority G.S. 74-24.4(a).

SECTION .0500 - SURFACE MINE: PIT AND QUARRY STANDARDS

.0501 APPLICABILITY

In addition to complying with the ~~requirements~~ requirements of Section .0400 of this Chapter, all mines, except for the underground portions of underground mines, shall comply with the rules of this Section.

Statutory Authority G.S. 74-24.4(a).

.0505 MAINTENANCE

~~All machinery, structures and places in use shall at all times be maintained in a safe condition.~~

Statutory Authority G.S. 74-24.4(a).

.0507 CRANES: DRAGLINES: SHOVELS AND DERRICKS

(a) Air Pressure Gauge. Machines equipped with air brakes or air clutches shall have an air pressure gauge in view of the machine operator.

(b) Derrick Guy Ropes. Derrick guy ropes that support masts shall be securely anchored and

fastened. They shall be inspected at least semi-monthly and replaced when needed.

(c) Direction of Cab Travel. The cab of machines, when traveling, shall face in the direction of travel, if practicable; otherwise a competent qualified person shall direct the movement from the ground.

(d) Oilers. Oilers shall keep the machine operator informed as to their whereabouts.

(e) Suspension Cables, Sheaves and Pins. All boom suspension cables, along with their sheaves and pins, shall comply with the machine manufacturer's specifications. They shall be inspected at least monthly and replaced when needed.

Statutory Authority G.S. 74-24.4(a).

.0510 RAILWAYS

~~(a) Designated Limits. Railroad cars shall be left standing within the limits designated by clearance signs or posts.~~

~~(b) Handbrakes. Railroad car handbrakes shall be tested before an attempt is made to move the car. If defective brakes are discovered, the car shall be marked appropriately for repairs and moved only with a locomotive or when attached to another car having good brakes.~~

~~(c) Pinching. Starting a railroad car on a grade by "pinching" shall be prohibited except when a man person is stationed at the brake wheel. ("Pinching" is defined as moving a railroad car with a pinchbar by placing the pinchbar between the wheel and the railroad track and using leverage to move it forward.)~~

Statutory Authority G.S. 74-24.4(a).

.0511 MOTOR VEHICLES

~~(a) Dumping Signal. Trucks shall not dump into attended crusher chutes, hoppers or bins without a signal from the attending operator.~~

~~(b) Safety Equipment. Where practicable, all motor vehicles shall be equipped with a windshield, windshield wipers, horn, air pressure gauge (where air brakes are used) and rear view mirrors.~~

Statutory Authority G.S. 74-24.4(a).

.0512 CONVEYORS

~~All conveyors extending over seven feet above a walking surface shall have a walkway adjacent to the conveyor if practicable. Where no~~

~~walkways are practicable, conveyors that will so permit by structural strength shall have a hand line on both sides at least 30 inches above the belt, and the controls shall be locked in the "off" position before anyone is permitted on the conveyor.~~

Statutory Authority G.S. 74-24.4(a).

.0515 FIRE PREVENTION

(a) Open Fires. The use of open fires for comfort heating for miners shall be prohibited.

(b) Storage and Use of Oxygen, Etc. Oxygen, oxyacetylene and ~~oxyhydrogen~~ oxyhydrogen and/or electric welding, burning and cutting equipment shall be placed under the charge of a ~~competent~~ qualified person or persons who shall be responsible for its safe storage and use.

(c) Acetylene Storage and Use. Gas Acetylene cylinders shall be secured vertically and shall be handled with extreme caution. ~~Care shall be taken that all connections and equipment be free from oil or grease and that oxygen cylinders are capped when not in use.~~ Acetylene shall not be used at pressures higher than 15 pounds (6.8 kilograms) per square inch (6.452 square centimeters).

~~(e) Storage of Flammable Liquids. Suitable and safe facilities shall be provided for storage of flammable liquids. Flammable liquids shall not be stored within 300 feet of any explosives magazine.~~

Statutory Authority G.S. 74-24.4(a).

.0516 ELECTRICAL EQUIPMENT

(a) National Electrical Code. All electrical apparatus, equipment and wiring shall be installed and maintained in accordance with the National Electrical Code (1975 1993 Edition, including subsequent amendments and editions) insofar as the code is applicable to the operation of surface mines, pits and quarries. Copies of the code are available for inspection and purchase in the office of the division and may be obtained from the National Fire Prevention Protection Association, 60 1 Battery March Street Batterymarch Park, Post Office Box 9101, Boston Quincy, Mass. 02110 02269-9101.

(b) Personnel Authorization and Instruction. Only qualified persons shall install, operate, repair, work on or with electric wires, lighting conductors or electrical apparatus, machinery or equipment.

Statutory Authority G.S. 74-24.4(a).

.0519 SAFETY SHOWERS AND EYE WASH FOUNTAINS

~~(a) Dangerous Chemicals. All dangerous chemicals shall be stored, handled and used in a safe manner so as to prevent hazards to employees' health and safety.~~

~~(b) Safety Showers and Eye Wash Fountains.~~ Safety showers and eye wash fountains shall be provided, operable, and easily accessible to near all areas where a hazard exists from hazardous chemical splashes and spills. ("Hazardous chemical" is defined as a chemical for which there is statistically significant evidence based on at least one study conducted in accordance with established scientific principles that acute or chronic health effects may occur in exposed employees.)

Statutory Authority G.S. 74-24.4(a).

.0520 JET CHANNELING OR PIERCING

~~(a) Hard surfacing. A hard surface wearing material shall be maintained on the sides of the burner.~~

~~(b) Lighting. No person shall be allowed in front of a burner while it is being lighted.~~

~~(c) Lighting Over Channel. Burners shall not be lighted in or over channels.~~

~~(d) Manufacturer's Recommendations. All jet channeling or piercing apparatus shall be maintained and operated in accordance with the manufacturer's recommendations.~~

~~(e) Oxygen Storage Tanks. Oxygen storage tanks shall not be placed under high voltage power lines or guy cables.~~

~~(f) Position of Burner. The burner shall always be kept in a downward position in order to prevent possible flow of fuel oil into air and oxygen lines.~~

~~(g) Refueling. Fuel oil tanks shall not be refueled while the burner is in operation.~~

~~(h) Shut down. After the burner has been shut down, the air or water shall be left on so as to adequately cool the burner.~~

~~(i) Storage Area. The area surrounding oxygen storage shall be kept clean and free of gasoline, oil, paints, coal, refuse and other combustible materials.~~

Statutory Authority G.S. 74-24.4(a).

.0521 EXPLOSIVES: GENERAL RULES

(a) All Clear Signal. An "all clear" signal shall be sounded before any person is allowed to return to the danger zone after a blast.

~~(b) Approved Detonators. Only detonators of an approved type shall be used in firing a blast.~~

~~(e)(b)~~ Destroying Empty Containers. No person shall be permitted to remain within 100 feet (30.48 meters) of a burning pile of empty explosives containers.

~~(d) Electrical Storms. All use of electric blasting caps and all other explosives and any handling thereof shall be stopped upon the approach of an electrical storm, and all personnel in the danger area shall immediately seek a place of safety.~~

~~(e) Handling Misfires. Misfires shall be handled only by qualified and competent persons.~~

~~(f) Misfires. In the event of a misfire all persons not engaged in the removal of the explosives shall be kept out of the danger zone.~~

~~(g)(c)~~ Removing Containers. Empty explosives containers shall not be permitted to be taken from the premises.

~~(h)(d)~~ Work on Blast Area. Only persons necessary to the shotloading operation shall be permitted to work in front of the face of the blast area when a primary blast is being loaded.

Statutory Authority G.S. 74-24.4(a).

.0522 TRANSPORTATION OF EXPLOSIVES ON SITE

(a) Congested Areas. Vehicles transporting explosives or blasting agents shall not be driven through congested areas whenever it is practicable to avoid them. When it is necessary to stop a vehicle containing explosives or blasting agents in a congested area, the vehicle shall not be left unattended.

(b) Handling Explosives. Explosives or blasting agents shall not be thrown, dropped or otherwise roughly handled.

~~(c) Operators' Operators' Qualifications.~~ Explosives vehicles shall be operated only by sober, prudent, competent and qualified persons.

~~(d) Prohibited Vehicles. No explosives or blasting agents shall be transported in any form of pole trailer, nor shall any trailer be attached to a vehicle transporting explosives or blasting agents. Neither shall any explosives or blasting agents be transported in a front end loader or bulldozer or any other vehicle not designed for cargo transport.~~

Statutory Authority G.S. 74-24.4(a).

.0525 PRIMARY BLASTING

(a) Detonators in Blast Area--Detonating Fuse. When loading a blast primed with detonating fuse, detonators shall not be attached to the detonating fuse until the danger zone has been cleared.

~~(b) Lodged Cartridge Dislodging. All lodged cartridges shall be dislodged with a spear shaped wooden pole.~~

~~(e)(b)~~ Loading and Other Operations. Loading shall not begin until the shot has been completely drilled. On a shot being loaded, a drill shall not be used for any purpose closer to a loaded hole than a distance of three times the spacing of the drill pattern used.

~~(d) Loading of Explosives Persons in Blast Area. Only authorized personnel shall be allowed in or near the blast area.~~

~~(e) Loading Measuring Depth of Hole. Holes shall be checked prior to loading to determine depth and condition. After explosives have been loaded all measuring shall be done with a cloth tape and lead plumb bob, wooden tamping pole or wooden dolly free of exposed metal parts.~~

Statutory Authority G.S. 74-24.13(c); 95-4(2).

.0526 SECONDARY BREAKAGE

(a) Dropballing. The dropball operator shall be protected from flying rock by screen cloth or plexiglass or both. The operator shall not drop the ball on a rock which has a visible drill hole until it has been determined that the hole does not contain explosives. Dropballs shall be operated at a safe distance from unprotected employees.

(b) Loading Explosives While Drilling For Secondary Blast. Only authorized persons shall be allowed in the area where loading is being performed. No secondary blast shall be fired when preparing for another blast or when other loaded holes are located in the danger zone.

(c) Work on Muck Pile While Secondary Drilling, Blasting or Mud Capping. No tools or equipment shall be permitted on a muck pile directly above or below a blaster while he a person is loading explosives for secondary blasting.

Statutory Authority G.S. 74-24.4(a).

**TITLE 14A - DEPARTMENT OF CRIME
CONTROL AND PUBLIC SAFETY**

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Crime Control and Public Safety, Division of State Highway Patrol intends to amend rules cited as 14A NCAC 9H .0201, adopt 9H .0304 - .0307 and repeal 9A .0001; 9H .0101, .0103 - .0105, .0301 - .0303, .0401 - .0402, .0501 - .0504, .0601 - .0605, .0701, .0703 - .0704, .0801 - .0805, .0901 - .0905 and .1001 - .1003.

The proposed effective date of this action is August 1, 1994.

The public hearings will be conducted at 10:00 a.m. on June 8, 1994 at the Library, 2nd Floor, Archdale Building, 512 N. Salisbury Street, Raleigh, NC 27611.

Reason for Proposed Action: Updating rules to conform to current procedures and repealing rules that do not meet the definition of a rule.

Comment Procedures: Any interested person may present comments relevant to the action proposed at the public hearing either in writing or oral form. Written statements not presented at the public hearing may be directed prior to the hearing to Wanda D. Goodson, Administrative Procedures Coordinator, First Floor, Archdale Building, 512 N. Salisbury Street, P.O. Box 27687, Raleigh, NC 27611-7687, up to June 15, 1994.

CHAPTER 9 - STATE HIGHWAY PATROL

SUBCHAPTER 9A - DEFINITIONS

**.0001 DEFINITIONS TO APPLY
TO THIS CHAPTER**

The following definitions shall apply to the words and phrases found in this Chapter. Members shall be governed by these definitions whenever they appear in any Highway Patrol rule, regulation, order, policy, or directive, or in the patrol manual:

- (1) ~~Captain. A commissioned officer in the patrol who ranks below a major and above a lieutenant;~~

- (2) ~~Chain of Command. Official route of communication from the supervisor lowest in rank through intermediate supervisors to the highest appropriate supervisor, including the Patrol Commander if appropriate; or channels;~~
- (3) ~~Channels. Official route of communication from the supervisor lowest in rank through intermediate supervisors to the highest appropriate supervisor, including the Patrol Commander if appropriate; chain of command;~~
- (4) ~~Civilian Employees. Persons employed by the State Highway Patrol who are not sworn law enforcement officers and who do not have police powers;~~
- (5) ~~Colonel. A commissioned officer in the patrol who ranks above all other members of the patrol;~~
- (6) ~~Commanding Officer. A commissioned officer in charge of the Highway Patrol or any organizational subdivision of the patrol, or any commissioned officer in charge of any special detail;~~
- (7) ~~Commissioned Officer. A uniformed member who holds the rank of lieutenant, captain, major, lieutenant colonel, or colonel;~~
- (8) ~~Compulsory Leave Without Pay. Action taken in temporarily removing a member from duty as a result of his violation of patrol policy, rules, regulations or directives, not to exceed three days;~~
- (9) ~~Department. The Department of Crime Control and Public Safety;~~
- (10) ~~Detail. Members of the patrol grouped together for the accomplishment of a specified official mission;~~
- (11) ~~Directive. A numbered written order issued by the Patrol Commander which prescribes a policy governing the operation of the Highway Patrol or which outlines procedures to be followed in performing a function or duty;~~
- (12) ~~Director of Administrative Services. The commanding officer of the Highway Patrol administrative services section, who holds the rank of major;~~
- (13) ~~Director of Communications and Logistics. The Commanding Officer of the Highway Patrol communications and logistics Section, who holds the rank of major;~~

- (14) ~~Director of Inspection and Internal Affairs. The commanding officer of the Highway Patrol inspection and internal affairs section, who holds the rank of major;~~
- (15) ~~Director of Zone Operations. The commanding officer of either of the Highway Patrol's two geographical zones, who holds the rank of major;~~
- (16) ~~Dismissal. An act which terminates the service of a member without the member's consent;~~
- (17) ~~District. A subordinate unit within a troop which encompasses one or more counties and is supervised by a district first sergeant;~~
- (18) ~~District First Sergeant. The ranking noncommissioned officer assigned to a Highway Patrol district;~~
- (19) ~~District Supervisor. A district first sergeant;~~
- (20) ~~Employee. Any enforcement member or a civilian employed by the patrol;~~
- (21) ~~Enforcement Member. Any employee of the patrol who is a sworn law enforcement officer;~~
- (22) ~~First Sergeant. A noncommissioned officer in the patrol who ranks above a sergeant and below a lieutenant;~~
- (23) ~~Gift. Something that is bestowed voluntarily and without compensation; for example, money, tangible or intangible personal property, a loan, any service rendered, entertainment, or a promise, expressed or implied, to provide any of these;~~
- (24) ~~Gratuity. Something that is bestowed voluntarily and without compensation; for example, money, tangible or intangible personal property, a loan, any service rendered, entertainment, or a promise, expressed or implied, to provide any of these;~~
- (25) ~~Illegal Order. An order issued by a superior officer which is not consistent with applicable laws;~~
- (26) ~~Length of Service. The length of time that a member has been engaged in the actual performance of patrol duty as an enforcement member;~~
- (27) ~~Lieutenant. A commissioned officer in the patrol who ranks below a captain and above a first sergeant;~~
- (28) ~~Lieutenant Colonel. A commissioned officer in the patrol who ranks below the colonel and above a major and who serves as the patrol executive officer;~~
- (29) ~~Line Sergeant. A noncommissioned officer in the patrol who ranks below a first sergeant and above a trooper and who supervises a number of troopers on the road;~~
- (30) ~~Major. A commissioned officer in the patrol who ranks below the lieutenant colonel and above a captain;~~
- (31) ~~Master Trooper. A trooper who has completed six years of satisfactory service and who has been recommended and accepted for promotion to this rank;~~
- (32) ~~Medical Review Officer. The medical doctor under contract with the Patrol responsible for administering the Patrol Medical Services Program;~~
- (33) ~~Member. All uniformed personnel who are charged with enforcement duties, including troopers and officers, noncommissioned and commissioned;~~
- (34) ~~Military Leave. The period of time during which a member is granted leave from the patrol when called to perform active military service;~~
- (35) ~~Noncommissioned Officer. A uniformed member who holds the rank of sergeant or first sergeant;~~
- (36) ~~Off Duty. Time during which a member is authorized to be free of the responsibility of performing routine patrol duties;~~
- (37) ~~Order. An instruction or directive, either written or oral, issued by superior officers to subordinates in the course of patrol duty;~~
- (38) ~~Patrol. The State Highway Patrol as an organization, including all employees, both enforcement and civilian;~~
- (39) ~~Patrol Commander. The commanding officer of the Highway Patrol, who holds the rank of colonel;~~
- (40) ~~Patrol Executive Officer. The officer second in command of the patrol;~~
- (41) ~~Patrol Order. An inclusive term which applies to the Patrol Manual, a directive, rule, regulation, general order, special order, administrative notice, or written procedure;~~
- (42) ~~Policy. A guiding principle or course of action designed to influence and determine decisions, actions and procedures;~~
- (43) ~~Probation. A 12 month trial period in which a member's fitness for~~

membership in the patrol is tested; At the end of this period, the Patrol Commander evaluates a member's performance and determines whether or not he may continue as a member of the patrol;

- (44) Probationary Member. Any member who has been employed by the patrol for less than the 12 month probation period; Members are also subject to the provisions of Chapter 126 of the General Statutes of North Carolina; and, pursuant thereto, do not become "permanent state employees" until such time as they have been continuously employed by the state for five years;
- (45) Procedure. The officially established method for dealing with a given situation or performing a specific activity;
- (46) Rank. A specific level of authority within the organizational structure of the patrol;
- (47) Recommendation. An investigator's or supervisor's suggested course of action which is forwarded to the appropriate supervisor through the chain of command with a completed report of investigation;
- (48) Resignation. Voluntary termination of service by a member of the patrol;
- (49) Retirement. Termination of active service of a member with the number of years of creditable service required by statute to be eligible for retirement benefits, or termination of service due to incapacitating disability;
- (50) Secretary. The secretary of the Department of Crime Control and Public Safety;
- (51) Section. Any of the five functional subdivisions of the patrol commanded by a major administrative services, communications and logistics, inspection and internal affairs, zone one operations and zone two operations;
- (52) Section Director. A zone director or an equivalent section commander in a staff position;
- (53) Senior Trooper. A trooper who has completed three years of satisfactory service and who has been recommended and accepted for promotion to this rank;

- (54) Sergeant. A noncommissioned officer in the patrol who ranks below a first sergeant and above a trooper;
- (55) Special Order. A written order issued by the Patrol Commander relating to personnel matters;
- (56) Supervisor. A commissioned or noncommissioned officer assigned supervisory control and direction of members;
- (57) Suspension. Action taken in removing a member from duty without pay in order to investigate an alleged violation of patrol policies, rules, regulations or directives; Suspension without pay may continue until a full and final resolution of the matter is reached;
- (58) Troop. A subordinate unit within a zone which encompasses several districts and is commanded by a captain;
- (59) Troop Commander. A captain responsible for the supervision and control of a patrol troop;
- (60) Trooper. A uniformed member who does not hold commissioned or noncommissioned officer rank;
- (61) Unit. A Highway Patrol troop or an equivalent organizational subdivision commanded by a captain;
- (62) Unit Commander. A troop commander or an equivalent commander in a staff position who holds the rank of captain;
- (63) Warrant Officer. An officer, usually a skilled technician, intermediate in rank between a noncommissioned officer and a commissioned officer;
- (64) Zone. A geographical subdivision of the Highway Patrol which encompasses four of the patrol's eight troops, commanded by a major;
- (65) Zone Director. A major responsible for the supervision and control of a Highway Patrol zone.

Statutory Authority G.S. 20-184; 20-185; 20-187; 20-188.

SUBCHAPTER 9H - ENFORCEMENT REGULATIONS

SECTION .0100 - ENFORCEMENT ACTIONS

.0101 ARREST POLICY

(a) ~~Members shall issue citations or make arrests only for definite, clear-cut and substantial violations. Members shall not issue citations nor make arrests for frivolous, technical, or borderline violations. Factors such as race, sex, economic status, or familial, political or fraternal affiliation shall not influence a member in any manner whatsoever.~~

(b) ~~The member shall issue the pink copy of the North Carolina Uniform Citation for all definite, clear cut and substantial violations. If the member has reason to believe that the offender is not likely to submit to the jurisdiction of the court as cited, or if the offense is one which requires arrest, he shall arrest the offender and shall without unreasonable delay take him before a judicial official of the General Court of Justice as defined in N.C. General Statutes Chapter 15A and as provided in Regulation .0103 of this Section.~~

(c) ~~Upon arrest, the member shall, without unnecessary delay, advise the offender of his right to communicate with counsel, family and friends, and must allow him reasonable time and opportunity to do so.~~

(d) ~~Members shall inform every accused person of the specific law which he is charged to have violated. If facts are subsequently discovered which require additional charges to be filed, the offender shall be informed of the additional charges prior to trial time.~~

(e) ~~Warning tickets may be issued by members for the following reasons:~~

- ~~(1) upon discovery of a mechanical defect in a vehicle which needs correction but which does not amount to a definite, clear-cut, substantial violation of the motor vehicle laws;~~
- ~~(2) for conduct constituting a potential hazard to the motoring public which does not amount to a definite, clear-cut, substantial violation of the motor vehicle laws;~~
- ~~(3) to require a driver to produce his driver's license or motor vehicle registration card at a later time.~~

Statutory Authority G.S. 20-4.19; 20-49; 20-183; 20-184; 20-185; 20-187; 20-188; 15A-401; 15A-501.

.0103 BAIL BOND

(a) ~~When a person is arrested for an offense, the person shall be taken without undue delay to a judicial official of the General Court of Justice~~

~~where a warrant shall be prepared according to law and served on the individual. Bond, if any, shall be set by the judicial official. No money, security, bail bond card, or other article of value shall be accepted by members.~~

(b) ~~When a member cites an offender to appear in court, he should cooperate with the offender in giving appropriate directions to the appropriate court seat and should in no case accept any money, bail bond, bail bond card, securities or other articles of value from the offender.~~

Statutory Authority G.S. 20-184; 20-185; 20-187; 20-188; 15A-501.

.0104 OPERATOR'S LICENSE TO REMAIN IN DRIVER'S POSSESSION

~~When an arrested person is allowed to drive his vehicle to a judicial official's office, he should have in his possession both his operator's license and the registration card for the vehicle he is operating. At no time shall the member escorting an arrested person keep these items in his possession while allowing an arrested person to drive his vehicle to the judicial official's office.~~

Statutory Authority G.S. 20-184; 20-185; 20-187; 20-188; 20-7.

.0105 VALIDATING CITATIONS

~~Members shall deliver the N.C.U.C. to a judicial official of the General Court of Justice, for validation as soon after issuance as practical. In no case shall a member fail to deliver the N.C.U.C. within five calendar days of issuance, or prior to the designated court date, whichever should come first.~~

Statutory Authority G.S. 15A-302; 20-184; 20-185; 20-187; 20-188.

SECTION .0200 - CIVIL DISTURBANCES

.0201 REQUEST FOR ASSISTANCE

(a) In the event state assistance is deemed necessary by local officials to assist with riots, mob violence or other civil disturbances, local government officials should will contact the local Highway Patrol troop commander, district supervisor, patrol communications center, patrol headquarters in Raleigh, or any available patrol

member. Local officials should state the nature of the emergency and the need for state assistance.

(b) If time will permit, a patrol member ~~should~~ may be immediately assigned to the scene to assess the situation and to inform patrol headquarters officials as to the existing situation and as to assistance needed.

(c) The patrol member assigned to assess the situation shall ascertain the following:

- (1) whether local authorities have utilized all of their own forces and are unable to control the situation; or
- (2) whether control of the situation is beyond the capabilities of the local authorities; or
- (3) whether local authorities are taking appropriate action.

Statutory Authority G.S. 20-184; 20-185; 20-187; 20-188.

SECTION .0300 - WRECKER SERVICE

.0301 IMPARTIAL USE OF SERVICES

~~Members of the patrol shall be absolutely impartial in using private wrecker services. Members shall, whenever possible and practicable, dispatch the wrecker service requested by the motorist requiring such services.~~

Statutory Authority G.S. 20-184; 20-185; 20-187; 20-188.

.0302 ROTATION OF WRECKER REQUESTS

~~(a) When a motorist does not request a particular wrecker service, members shall inform the telecommunicator as to the person making the request and shall inform the telecommunicator that the person has no preference as to a wrecker service. Troop Commanders may arrange for telecommunicators to maintain a computerized rotation wrecker log on which private business concerns providing dependable, 24 hour wrecker service may be listed at their request, provided they conform with the laws governing the operation of wreckers. Telecommunicators shall be responsible for assuring that each service is called on a regular and equal rotating basis, unless emergency circumstances require a deviation from the rotation policy, as described in Paragraphs (c) and (d) of this Regulation, or~~

~~the Troop Commander approves the use of a "Zone Wrecker Services" concept for a particular jurisdiction because of special considerations.~~

~~(b) The telecommunicator shall enter in the computerized log the name of the wrecker service contacted and the response by the service to the request. The date and time of the call is automatically recorded in the computerized log as well as the identification number of the telecommunicator making the entry.~~

~~(c) When an emergency exists, members shall not be required to call wreckers requested by motorists or required by the rotation log, but shall instead call the nearest available wrecker service, when an emergency exists. (For example, when traffic congestion is a major problem, when persons are pinned in the wreckage, when danger of fire or explosion is present, or when other emergency situations exist.)~~

~~(d) In the event the computerized rotation log is not in service (CAD down), the member requesting wrecker service shall be notified. The member shall request the nearest available rotation wrecker. The request shall be entered on the slip log by the communications center as "CAD DOWN/NEAREST ROTATION WRECKER REQUESTED BY (UNIT CALL NUMBER)".~~

Statutory Authority G.S. 20-184; 20-185; 20-187; 20-188.

.0303 RECORDING WRECKER REQUESTS

~~(a) Members investigating accidents shall enter on the Accident Report Form the authorization for removal of vehicles from the scene.~~

~~(b) Troop commanders may require members to submit written verification of wrecker requests.~~

Statutory Authority G.S. 20-184; 20-185; 20-187; 20-188.

.0304 IMPARTIAL USE OF SERVICES

In order to perform its traffic safety functions, the Highway Patrol is required to use wrecker services to tow disabled, seized, wrecked, and abandoned vehicles. Members of the Highway Patrol shall assure the impartial use of wrecker services. Wrecker service includes any motor vehicle towing service which uses wreckers, rollbacks, cranes, or other such equipment.

Statutory Authority G.S. 20-184; 20-187; 20-188; 143B-10.

.0305 ROTATION, ZONE, CONTRACT, AND DEVIATION FROM SYSTEM

(a) The Troop Commander shall arrange for the telecommunications center to maintain an impartial system within each district of the Troop which may include the following:

- (1) A computerized rotation wrecker log for the entire district whereby wrecker services are called in the order they appear on a log;
- (2) A zone system within the district with a rotation wrecker log being maintained in each zone;
- (3) A zone or contract system operated in conjunction with one or more local agencies;
- (4) A rotation wrecker log, zone, or contract system for wreckers based upon size and capacity of the equipment and/or availability of repair services; or
- (5) A combination of any such system.

(b) It is the policy of the Highway Patrol to use the wrecker service requested by the vehicle owner or person in apparent control of the motor vehicle to be towed. Patrol members shall not attempt to influence the person's choice of wrecker services, but may answer questions and provide factual information. If no such request is made, the Patrol system in place in the district will be used, absent an emergency or other legitimate reason.

(c) The Troop Commander, in his discretion, may deviate from any of these Rules if there are insufficient wrecker services of the type needed within a district to meet the needs of the Patrol.

(d) When exigent circumstances require, a telecommunicator may deviate from the Patrol system or the wrecker service requested by the motorist.

Statutory Authority G.S. 20-184; 20-185; 20-187; 20-188.

.0306 WRECKER SERVICE REGULATIONS

(a) In order to assure that the needs of the Patrol are met, the Troop Commander shall include on the Patrol wrecker system only those wrecker services which agree to comply with the following requirements:

- (1) Have a safe storage area for all vehicles towed. This storage area may be a locked building or a secured, fenced area where the stored vehicles and other property are not accessible to the public.
- (2) Equip each wrecker with legally required lighting and other safety equipment to protect the motoring public and maintain such equipment in good working order.
- (3) Equip each wrecker with brooms, shovels, etc. to remove debris from the highway and agree to clear the highway prior to leaving the scene of any collision.
- (4) Be available to the Patrol and the general public on a 24-hour basis and be willing to accept collect calls from the Patrol.
- (5) Consistently respond, under normal conditions, in a timely manner.
- (6) For Patrol involved incidents, respond only upon request from proper Patrol authority and not use scanners or other police radio monitoring equipment to respond to a disabled vehicle or wreck.
- (7) Impose reasonable charges for work performed and present one bill to owner or operator of towed vehicle. Wrecker services may secure assistance from another wrecker service when necessary, but only one bill is to be presented to the owner or operator of the vehicle for the work performed.
- (8) Allow only wrecker operators who have valid drivers licenses for the type of vehicles driven and require each operator to conduct himself or herself in a proper manner at all collision scenes and when dealing with the public.
- (9) Adhere to all statutes regarding solicitation of business from the highway.
- (10) Employ only wrecker operators who demonstrate an ability to perform required services in a safe, timely, and efficient manner.
- (11) Adhere to all applicable laws relating to wrecker services, including licensing, taxes, and insurance.
- (12) Notify the Patrol without delay whenever the wrecker service is unable to respond to a call.

- (13) Mark each wrecker service vehicle with the name and telephone number of the business.
- (14) Secure all personal property at the scene of a collision to the extent possible, and preserve personal property in a vehicle which is about to be towed. A wrecker service is not to be held responsible for personal items which do not come into the possession of the service.
- (15) Make all complaints to the Patrol regarding any incident involving the Patrol within 30 days of the alleged incident.
- (16) The owner shall ensure that the owner, each wrecker driver, or other employee or agent involved in the wrecker service has not been convicted at any time of a felony arising out of the operation or use of a vehicle, or a felony involving force, violence, theft, embezzlement, forgery, fraud, false statement, sexual conduct, or the manufacture, sale, transportation, or possession of a controlled substance or alcoholic beverage, or convicted within the past five years of any other felony or a misdemeanor involving fraud, forgery, embezzlement, theft, force, or violence, controlled substances or sexual misconduct. Within 10 days of the employment of any person or upon the request of a member of the Patrol, the owner of the wrecker service agrees to supply the Patrol with the full name, current address, date of birth, social security number, and drivers license number and state of issuance for the owner, wrecker driver, or other employee or agent involved in the wrecker service.
- (17) Upon request or demand, return personal property stored in or with a vehicle, whether the towing, repair, and/or storage fee on the vehicle has been or will be paid.
- (18) Tow disabled vehicles to any destination requested by the vehicle owner or other person with apparent authority.
- (19) Agree that being called by the Patrol to tow a vehicle does not create a contract with or obligation on the part of Patrol personnel to pay any fee or towing charge except when towing a

vehicle owned by the Patrol, a vehicle is later forfeited to the Patrol, or when a court determines that the Patrol wrongfully authorized the tow and orders the release of the vehicle without payment of transportation and storage fees.

- (20) Agree that being placed on the Patrol system does not guarantee a particular number of calls or the same number of calls as any other service, or compensation when not called in accordance with the system or removed from the system.

- (21) Agree that the failure to respond to a call by the Patrol will result in being placed at the bottom of any rotation wrecker log, and consistent failures to respond will result in removal from the system.

(b) The District First Sergeant shall perform a background investigation on each wrecker service desiring to be placed on the Patrol wrecker system and determine if the wrecker service meets the requirements set forth in this Rule. The District First Sergeant shall be responsible for monitoring complaints and for conducting random checks of compliance with all requirements.

(c) The Troop Commander shall provide that a wrecker service will only be included once on each log. In order to be listed on a log within a district or zone, a wrecker service must have a full-time office, manned and open for business at least five days per week, and a secured lot within the district or zone. A wrecker service may not, through contract or agreement to provide wrecker service for service stations, garages, or other business, be listed through another company. Exceptions to this requirement may be made for specialized or large capacity wreckers when none are available in a zone or district.

(d) The Troop Commander may place wrecker services on the Patrol system which do not meet all of the requirements contained in this Rule if the Troop Commander determines there are an insufficient number on the system in that area to meet the needs of the Patrol.

(e) If the Troop Commander chooses to use a contract, zone, or other system administered by a local agency, the local agency rules govern the system.

(f) A wrecker service which is denied inclusion on the Patrol wrecker service system may

appeal this decision to the appropriate Zone Director at Patrol Headquarters in Raleigh, NC.

(g) A wrecker service denied inclusion on the Patrol wrecker system may reapply at any time that the wrecker service can show by clear and convincing evidence that it meets the requirements for inclusion. The Troop Commander may order an additional investigation. The wrecker service shall be included on the Patrol system when the wrecker service shows the Troop Commander by clear and convincing evidence that it meets all requirements for inclusion.

Statutory Authority G.S. 20-184; 20-185; 20-187; 20-188.

.0307 REMOVAL OF WRECKER SERVICE

(a) Once a wrecker service is placed on the wrecker service system, the District First Sergeant may remove a wrecker service which does not comply with the rules and policies of the Patrol. Absent exigent circumstances, at least seven days prior to removal, a District First Sergeant shall notify a wrecker service in writing of the reason for the removal.

(b) A wrecker service which has received notice of removal from the Patrol wrecker service system by the District First Sergeant may appeal to the appropriate Troop Commander or his designee. If the appeal is received at least five days prior to removal, the hearing shall be held prior to removal. Otherwise, the hearings shall be held within 10 days of receipt of the appeal. The Troop Commander may uphold the decision of the First Sergeant or he may order the wrecker firm to be placed back on the rotation system. No wrecker service which is removed is entitled to additional calls, priority listing, or other compensation if placed back on the Patrol system.

(c) A wrecker service removed from the list may reapply at any time it can demonstrate it will comply with all rules. The Troop Commander may order additional investigation. The Troop Commander shall place the wrecker service back on the list when the Troop Commander has been presented clear and convincing evidence by the wrecker service that it now complies and will comply with all rules in the future.

Statutory Authority G.S. 20-184; 20-185; 20-187; 20-188.

SECTION .0400 - TRAFFIC ACCIDENT INVESTIGATION

.0401 ASSISTING CIVILIAN INVESTIGATORS

~~(a) Members may return to an accident scene to assist interested persons with investigations provided that they shall only provide a factual description of the scene and shall not express any opinion as to the reason for the accident or as to the fault of any person involved in the accident.~~

~~(b) Members may return to accident scenes to assist the district attorney with the investigation of criminal cases.~~

Statutory Authority G.S. 20-184; 20-185; 20-187; 20-188.

.0402 ACCIDENT REPORT COPIES

~~(a) Traffic accident reports may be reproduced at district headquarters or other Patrol installations that have the requested report on file.~~

~~(b) Accident reports shall be under the control of the district sergeant and shall not be removed from the district office except by patrol members for official purposes. Reproduced copies may be provided upon request in accordance with Directive 31.~~

~~(c) Nothing in this Regulation shall prohibit members from using accident reports to release authorized information to the news media.~~

Statutory Authority G.S. 20-184; 20-185; 20-187; 20-188; 20-166.1.

SECTION .0500 - PATROL ESCORTS AND RELAYS

.0501 ESCORTING EMERGENCY VEHICLES

~~Members shall not escort ambulances or other emergency vehicles unless special circumstances require. Exceptions may be made when a driver of an emergency vehicle cannot reach a hospital or other destination without assistance.~~

Statutory Authority G.S. 20-184; 20-185; 20-187; 20-188.

.0502 ESCORTING PRIVATE VEHICLES

~~Members shall not escort private vehicles making emergency runs unless special circumstances require.~~

Statutory Authority G.S. 20-184; 20-185; 20-187; 20-188.

.0503 ESCORTING FUNERAL PROCESSIONS

~~Members shall not escort funeral processions without authorization from a supervisor.~~

Statutory Authority G.S. 20-184; 20-185; 20-187; 20-188.

.0504 ESCORTING GROUPS

~~Members shall not provide a patrol escort for any organization or group without prior authorization from a unit commander or higher authority.~~

Statutory Authority G.S. 20-184; 20-185; 20-187; 20-188.

SECTION .0600 - USE OF PATROL CARS AND AIRCRAFT

.0601 WHO MAY DRIVE

~~Only the persons listed in this Regulation are authorized to drive patrol cars:~~

- ~~(1) enforcement members while on duty;~~
- ~~(2) a patrol mechanic while road testing a vehicle or while delivering a vehicle to a member or to a garage;~~
- ~~(3) a civilian while transporting a member to a hospital who is incapacitated by illness or injury;~~
- ~~(4) civilian employees of the patrol when authorized by a unit commander or higher authority;~~
- ~~(5) civilian mechanics on premises of garage or service stations while servicing patrol vehicles.~~

Statutory Authority G.S. 20-184; 20-185; 20-187; 20-188.

.0602 UNAUTHORIZED PASSENGER

~~Members shall not transport unauthorized persons in patrol vehicles. Authorized persons may be transported when circumstances require. For purposes of this Rule authorized persons shall include accident victims, stranded motorists, witnesses, prisoners or other persons when required in line of duty or authorized by a first sergeant or person of higher rank.~~

Statutory Authority G.S. 20-184; 20-185; 20-187; 20-188.

.0603 REQUEST FOR TRANSPORTATION

~~(a) Any request from the Governor or the Secretary of Crime Control and Public Safety for patrol transportation or services shall be acknowledged and handled immediately.~~

~~(b) All requests for security, medical or other emergency assistance shall be assessed by the troop commander or higher authority for approval based on need.~~

~~(c) Requests from other governmental officials for patrol transportation or services shall be granted only on approval by the Patrol Commander or the Secretary of Crime Control and Public Safety.~~

Statutory Authority G.S. 20-184; 20-185; 20-187; 20-188.

.0604 MEMBERS TO BE IN UNIFORM

~~Members shall be in uniform while operating a patrol vehicle unless granted permission to wear civilian apparel by a unit commander or higher authority.~~

Statutory Authority G.S. 20-184; 20-185; 20-187; 20-188.

.0605 USE OF AIRCRAFT

~~Members shall not use private or state owned aircraft in performing Highway Patrol official functions, whether on or off duty, without first obtaining approval of the Patrol Commander or his designated representative.~~

Statutory Authority G.S. 20-184; 20-185; 20-187; 20-188.

SECTION .0700 - USE OF PHYSICAL FORCE: FIREARMS

.0701 USE OF FORCE

~~Members shall use physical force in arrest and custody situations in strict conformance with the United States Constitution and the Constitution and laws of North Carolina as stated in G.S. 15A-401.~~

Statutory Authority G.S. 20-184; 20-185; 20-187; 20-188; 15A-401.

.0703 FIREARMS PROCEDURES

~~Members shall be governed by the following in the use of firearms:~~

- (1) ~~Members shall use only patrol issued ammunition in patrol issued firearms while performing enforcement duties.~~
- (2) ~~Members shall never fire warning shots.~~
- (3) ~~Members shall not remove sidearms from holsters except for authorized use in accordance with this Section, for inspection by a superior officer, or for other authorized purposes.~~
- (4) ~~Members shall not permit any person, other than another member, to use patrol firearms.~~
- (5) ~~Members who discharge any firearm while on duty, either intentionally or accidentally, shall file a written report to the Patrol Commander through official channels. This requirement shall not apply to members engaged in firearms practice.~~

Statutory Authority G.S. 20-184; 20-185; 20-187; 20-188.

.0704 INVESTIGATION AND REPORTING OF FIREARMS INCIDENT

(a) ~~A member shall immediately report to his immediate supervisor every use of a firearm in the performance of his duty not related to training. The supervisor shall carefully examine all the facts and circumstances surrounding the incident and determine compliance with patrol rules, directives, and procedures. A full written report of the incident and investigation shall be sent through channels to the Patrol Commander.~~

(b) ~~A member involved in an intentional shooting incident which results in personal injury or property damage shall immediately be relieved from normal duty and assigned administrative duties by the unit commander until completion of an investigation and an administrative review. The unit commander shall complete an investigation and submit a written report (within 48 hours if possible) through the chain of command to the Patrol Commander. A review and recommendation must be made by each level in the chain of command. If the preliminary investigation discloses any irregularities regarding state or federal law or patrol policy, the member shall be suspended as provided in Subchapter 9D, Regulation .0202 of this Chapter. If the investigation does not disclose any irregularities, the member may be re-assigned to normal duty~~

~~by the Patrol Commander unless circumstances dictate otherwise.~~

Statutory Authority G.S. 20-184; 20-185; 20-187; 20-188.

SECTION .0800 - PERSONS IN CUSTODY

.0801 SEARCH FOR WEAPONS

~~Members shall search all prisoners and take possession of all weapons and evidence. Exceptions may be made to this Rule as noted in Rule .0802 in this Section.~~

Statutory Authority G.S. 20-184; 20-185; 20-187; 20-188; 15A-231; 15A-401.

.0802 SEARCH OF PRISONERS OF THE OPPOSITE SEX

(a) ~~A member shall search a prisoner of the opposite sex only when an immediate search is necessary to assure the safety of the prisoner, member or others, or to preserve evidence which might otherwise be destroyed. If a member of the same sex as the prisoner is not available, only a pat down search will be conducted unless circumstances warrant an immediate, thorough search.~~

(b) ~~A pat down search may be delayed until the arrival of a second officer. If a second officer is not available and/or there is a safety issue, the pat down search will not be delayed.~~

(c) ~~Searches made under such conditions shall be made with all possible regard for decency and, if possible, a witness should be present.~~

Statutory Authority G.S. 20-184; 20-185; 20-187; 20-188; 15A-231; 15A-401.

.0803 TRANSPORTING PRISONERS

~~Members shall search and handcuff all persons under arrest or in custody prior to transportation and shall not remove the handcuffs until the prisoner is delivered to a detention facility. Exceptions to this Rule may be made within the discretionary guidelines of Directive 72, Security and Transportation of Prisoners.~~

Statutory Authority G.S. 20-184; 20-185; 20-187; 20-188.

.0804 TRANSPORTING PRISONERS OF THE OPPOSITE SEX

~~(a) When transportation of a person of the opposite sex is necessary, a third person, if possible, should be present throughout the trip. Exceptions may be made whenever it is impossible or impractical to have a third person present.~~

~~(b) Whenever it is necessary for a member to transport a person of the opposite sex without the presence of a third person, he/she shall:~~

~~(1) Notify the telecommunicator on duty of the identity and description of the person, reason for arrest or transportation, location, destination and odometer reading.~~

~~(2) Upon arrival at the destination the member shall notify the telecommunicator of such arrival, with a repeat of the identity of the person transported and the odometer reading.~~

~~(c) Exceptions may be made to the Rules set forth in this Section in individual cases when authorized by a First Sergeant or higher authority.~~

Statutory Authority G.S. 20-184; 20-185; 20-187; 20-188.

.0805 PROPERTY OF PRISONERS

~~(a) Members shall take all reasonable measures to protect the personal property in the possession of prisoners at the time of arrest or detention.~~

~~(b) When a member stores or takes possession of a vehicle containing a domesticated animal or arrests an individual that has in his possession a domesticated animal, the member shall make reasonable efforts to ensure for the safety and well being of the animal. Reasonable efforts may include contacting the animal's owner, an immediate family member of the owner, an Animal Shelter, or an Animal Control officer.~~

Statutory Authority G.S. 20-184; 20-185; 20-187; 20-188.

SECTION .0900 - INFORMATION TO NEWS MEDIA

.0901 NEWS RELEASES

~~Subject to the restrictions set forth in Regulation .0903 of this Section, members may release information concerning patrol arrests and investigations to news media personnel, provided such release of information will not jeopardize a~~

~~continuing investigation, the apprehension of suspects or the prosecution of the case.~~

Statutory Authority G.S. 20-184; 20-185; 20-187; 20-188.

.0902 INFORMATION WHICH MAY BE RELEASED

~~Members may make public the following information in criminal cases which do not involve juveniles:~~

~~(1) the name, age, place of residence, employment, marital status or similar background information of a person charged with an offense;~~

~~(2) the offense charged; the time and place of arrest; whether weapons were found or used; and description of evidence or contraband seized;~~

~~(3) the identity of investigating and arresting officers.~~

Statutory Authority G.S. 20-184; 20-185; 20-187; 20-188.

.0903 INFORMATION NOT TO BE RELEASED

~~Members shall not make public the following information:~~

~~(1) opinions or other statements as to the character, reputation, guilt or innocence of a person charged with an offense;~~

~~(2) opinions or other statements as to the character or reputation of witnesses;~~

~~(3) opinions or other statements concerning the credibility of anticipated testimony of witnesses;~~

~~(4) admissions, confessions, statements or alibis attributed to a person charged with an offense;~~

~~(5) the results of any investigative procedure, polygraph examination or laboratory test involving a person charged with an offense;~~

~~(6) the refusal of a person charged to submit to any test, except that information concerning refusal to submit to a chemical test for alcohol impairment may be released;~~

~~(7) opinions or other statements concerning the plea of a person charged or of possible disposition of a charge or case;~~

~~(8) opinions or other statements concerning evidence in a case or concerning points of argument to be presented in court;~~

- ~~(9) statements concerning physical evidence;~~
- ~~(10) names of juveniles who are under investigation or who have been taken into custody.~~

Statutory Authority G.S. 20-184; 20-185; 20-187; 20-188.

.0904 ALLOWING PHOTOGRAPHS TO BE TAKEN

- ~~(a) Members shall not prevent photographing of defendants in public places except in courtrooms and adjacent corridors as directed by the trial judge.~~
- ~~(b) Members shall not pose an arrested person for news media photographers.~~
- ~~(c) Photographers shall not be prohibited from taking photographs of crashed aircrafts or of vehicles involved in traffic collisions.~~

Statutory Authority G.S. 20-184; 20-185; 20-187; 20-188.

.0905 RELEASING NAMES OF DECEASED PERSONS

~~Members shall use extreme caution in releasing the names of deceased persons to the news media prior to notification of the deceased person's family.~~

Statutory Authority G.S. 20-184; 20-185; 20-187; 20-188.

SECTION .1000 - LEAVING ASSIGNED DUTY STATION

.1001 LEAVING DISTRICT OR TROOP AREA

- ~~(a) Members on duty shall not leave their assigned duty stations without authorization, except that members may leave assigned areas when in pursuit of a violator.~~
- ~~(b) When not in pursuit, members on duty must have authorization from the district first sergeant to leave assigned district or troop areas.~~

Statutory Authority G.S. 20-184; 20-185; 20-187; 20-188.

.1002 LEAVING THE STATE

- ~~(a) Members shall not leave the state while on duty except when authorized by the Patrol Commander or his designee, or when an emergency situation requires.~~

~~(b) When an emergency situation requires members to travel into another state, members shall not remain in the other state longer than is absolutely necessary.~~

~~(c) Members required to leave the state for emergency purposes shall be governed by the following:~~

- ~~(1) Members shall notify the nearest patrol communications center of their call number, destination, mission and estimated time of return to the state.~~
- ~~(2) Members shall notify the patrol communications center immediately upon their return to the state, and the information shall be entered on the communications log.~~
- ~~(3) Emergency travel authorization reports shall be filed with the district first sergeant as soon as possible after returning to the state. A single copy of the report will be filed for record purposes only at district headquarters.~~

Statutory Authority G.S. 20-184; 20-185; 20-187; 20-188.

.1003 LEAVING THE STATE: PURSUIT

- ~~(a) Members shall not leave the state in pursuit of a law violator without approval of the troop commander or higher authority.~~
- ~~(b) Members shall not exercise the power of arrest in another state nor return an arrested person to this state except by due process of law.~~

Statutory Authority G.S. 20-184; 20-185; 20-187; 20-188; 15A-402.

TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Environment, Health, and Natural Resources intends to amend rule cited as 15A NCAC 1J .0601.

The proposed effective date of this action is September 1, 1994.

Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): Any person requesting that the Division of Environmental Management hold a public

hearing on this proposed amendment must submit a written request by 5:00 p.m. May 31, 1994. The request must be submitted to Mrs. Vega George, Division of Environmental Management, P.O. Box 29535, Raleigh, NC, 27626-0535.

Reason for Proposed Action: The subject rule is contained within the rule Chapter pertaining to the State's Clean Water Revolving Loan and Grant Program. It is identical to one contained within the new rules which have been developed to govern the Clean Water Bonds Fund program. That rule has been modified as a result of comments received at a public hearing. Now it is necessary to make parallel changes to 15A NCAC 1J .0601 so that the two can again be identical.

Comment Procedures: Written comments should be submitted to the Division of Environmental Management, P.O. Box 29535, Raleigh, NC 27626-0535. Written comments will be accepted until June 15, 1994. Any person requesting information concerning this proposed amendment should contact Mrs. Vega George at (919) 733-6900, ext. 628.

CHAPTER 1 - DEPARTMENTAL
RULES

SUBCHAPTER 1J - STATE CLEAN
WATER REVOLVING LOAN AND
GRANT PROGRAM

SECTION .0600 - PRIORITY CRITERIA
FOR WASTEWATER COLLECTION
SYSTEM PROJECTS

0601 PUBLIC NEED

Select One; Maximum Value--25 points:

- (1) Project is intended to improve or expand an existing system for which adequate wastewater treatment facilities are will be provided by:
 - (a) ~~presently provided~~ a regional wastewater management authority, 25 points
 - (b) ~~under construction~~ the applicant, 20 points
 - (c) ~~proposed,~~ 15 points
- (2) Project is intended to provide a basic system for a unit of government which is not presently served by an approved

system and adequate wastewater treatment will be provided by:

- (a) ~~other public system~~ a regional wastewater management authority, 20 points
- (b) the applicant. 15 points

Statutory Authority G.S. 159G-10; 159G-15.

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Division of Water Resources intends to amend rules cited as 15A NCAC 2E .0107 and .0301.

The proposed effective date of this action is September 1, 1994.

The public hearing will be conducted at 6:00 p.m. on May 31, 1994 at the Archdale Building, Ground Floor Hearing Room, 512 N. Salisbury Street, Raleigh, NC.

Reason for Proposed Action: To comply with Senate Bill 821, amending G.S. 143-215.22(H). In 1993 the General Assembly amended General Statute 143-215.22(H) which requires all water withdrawals or transfers of one million gallons per day or more to register with the State. The Statute was amended to include ground water in the registration, add more required information, and exempt local governments with approved water supply plans on file with the state. The Statute also changed the registration from a one time registration to one that must be renewed every five years. The late penalty was also changed from 20% of the registration fee to \$5 per day that it is late up to \$500.

The Division of Water Resources has drafted proposed amendments to the existing rules so that these rules are consistent with the changes in the statute. The purpose of the draft rule amendments is to match the Statute and to clarify the amendments in the Statute. The subject of this public hearing will be these draft amendments to the rules.

Comment Procedures: All persons interested in this matter are invited to attend. Submittal of written comments or oral comments are request-

ed. For more information contact John D. Wray, Division of Water Resources, P.O. Box 27687, Raleigh, NC 27611-7687, telephone (919) 733-4064. Written comments will be accepted after the hearing until June 15, 1994.

Fiscal Note: *These Rules affect the expenditure or revenues of local funds. A fiscal note was submitted to the Fiscal Research Division on February 2, 1994, OSBM on February 2, 1994, N.C. League of Municipalities on February 2, 1994, and N.C. Association of County Commissioners on February 2, 1994.*

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2E - CAPACITY USE AREA WATER WITHDRAWAL

SECTION .0100 - GENERAL PROVISIONS

.0107 DELEGATION

(a) The Director is delegated the authority to grant, modify, revoke or deny permits under G.S. 143-215.15 and G.S. 143-215.16.

(b) The Director may delegate any permitting function given by the rules of this Subchapter.

(c) The Director is delegated the authority to assess civil penalties and request the Attorney General to institute civil actions under G.S. 143-215.17.

(d) The Director of the Division of Water Resources is delegated the authority to process applications and collect fees for registration of ~~surface~~ water withdrawals and transfers under G.S. 143-215.22H and G.S. 143-215.3(a)(1b).

(e) The Director of the Division of Water Resources may delegate any ~~surface~~ water withdrawal or transfer registration processing functions given by the rules of this Subchapter.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.3(a)(4).

SECTION .0300 REGISTRATION OF WATER WITHDRAWALS AND TRANSFERS

.0301 APPLICATION; PROCESSING FEES

(a) Any person subject to G.S. 143-215.22H, shall complete, sign, and submit an application for registration, on a form provided by the De-

partment, to the Director of the Division of Water Resources. The registration application and registration processing fee (if applicable) shall be mailed to the Division of Water Resources, North Carolina Department of Environment, Health, and Natural Resources, Post Office Box 27687, Raleigh, North Carolina 27611-7687.

(b) Except as otherwise provided in this Rule, a non-refundable registration processing fee in the amount of fifty dollars (\$50.00) shall be paid when the registration application form is submitted.

(1) No registration application form is complete until the registration processing fee is paid.

(2) Each facility from which a person withdraws or transfers one million gallons per day or more must be separately registered. The registration application for each facility to be registered must include the fee in the amount set forth in ~~these~~ this Rule.

(3) A late registration fee ~~in the amount of 20 percent of the registration processing fee shall be assessed as a penalty for failure to register by the deadlines set forth in 1991 N.C. Ses. Laws, c. 712, Sec. 3. in the amount of five dollars (\$5.00) per day for each day the registration of a water transfer or withdrawal is late, up to a maximum of five hundred dollars (\$500.00), shall be assessed as a penalty for failure to register the water transfer or withdrawal in a timely manner. The penalty stops accruing on the date of receipt of the completed registration application by the Division of Water Resources.~~

(4) Payment of the registration processing fee shall be by check or money order made payable to the "N. C. Department of Environment, Health, and Natural Resources." The check or money order should refer to ~~the~~ water withdrawal or transfer registration application.

(c) Except as otherwise provided in this Rule, upon receipt of a properly completed application form and the registration processing fee, the applicant will be issued a receipt of registration.

(d) Pursuant to G.S. 143-215.3(a)(1a), and G.S. 143-215.22H, no fees including late registration fees for failing to register or update regis-

trations in a timely manner, are required to be paid under this Rule by a farmer who submits an application for or an update of a registration of a withdrawal or transfer that pertains to farming operations. Upon receipt of a properly completed application from a farmer, the applicant will be issued a receipt of registration.

(e) Pursuant to G.S. 143-215.22H(c), separate registration of a water withdrawal or transfer is not required of a local government that completes and periodically revises and updates its water supply plan pursuant to G.S. 143-355(l).

(f) Any person who withdraws or transfers one million gallons or more in any single day must register the withdrawal or transfer.

Statutory Authority G. S. 143-215.3 (a)(1a); 143-215.3 (a)(1b); 143-215.22H; 143-355(l).

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNHR - Division of Water Resources intends to adopt rules cited as 15A NCAC 2E .0401 - .0402.

The proposed effective date of this action is September 1, 1994.

The public hearings will be conducted at 5:00 p.m. on May 31, 1994 at the Archdale Building, Ground Floor Hearing Room, 512 N. Salisbury Street, Raleigh, NC.

Reason for Proposed Action: The 1993 General Assembly ratified Senate Bill 875 which regulates surface water transfers of two million gallons or more per day from one river basin to another. In compliance with this act, the Division of Water Resources has developed proposed rules to implement the provisions of the statutes G.S. 143-215.22G and 143-215.22I). The proposed rules concern the applicability of the interbasin transfer law and judicial review procedures.

Comment Procedures: All persons interested in this matter are invited to attend. Submittal of written comments of oral statements are requested. For more information contact: Tony Young, Division of Water Resources, P.O. Box 27687, Raleigh, NC 27611, telephone (919) 733-4064.

Written comments will be accepted after the hearing until June 15, 1994.

Fiscal Note: These Rules affect the expenditure or revenues of local funds. A fiscal note was submitted to the Fiscal Research Division on February 2, 1994, OSBM on February 2, 1994, N.C. League of Municipalities on February 2, 1994, and N.C. Association of County Commissioners on February 2, 1994.

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2E - CAPACITY USE AREA WATER WITHDRAWAL

SECTION .0400 - REGULATION OF SURFACE WATER TRANSFERS

.0401 APPLICABILITY

(a) Except as otherwise provided in this Rule, the withdrawal, diversion, or pumping of surface water from one river basin and the discharge of all or any part of the water in a river basin different from the origin is a transfer. A discharge associated with a transfer shall include any release, disposal, or use of water that is not returned to the source basin as defined in G.S. 143-215.22G(1).

(b) Pursuant to G.S. 143-215.22G(3)(a) and 143-215.22G(3)(b), and notwithstanding the definition of basin in G.S. 143-215.22G(1), the following are not transfers:

- (1) The discharge point is situated upstream of the withdrawal point such that the water discharged will naturally flow past the withdrawal point.
- (2) The discharge point is situated downstream of the withdrawal point such that water flowing past the withdrawal point will naturally flow past the discharge point.

(c) The withdrawal of surface water from one river basin by one person and the purchase of all or any part of this water by another party, resulting in a discharge to another river basin, shall be considered a transfer. The person owning the pipe or other conveyance that carries the water across the basin boundary shall be responsible for obtaining a certificate from the Commission. Another person involved in the transfer may assume responsibility for obtaining the certifi-

cate, subject to approval by the Division of Water Resources.

(d) According to G.S. 143-215.221(b), a certificate is not required to transfer water from one river basin to another up to the full capacity of a facility to transfer water from one basin to another if the facility was existing or under construction on July 1, 1993. The full capacity of a facility to transfer water shall be determined as the capacity of the combined system of withdrawal, treatment, transmission, and discharge of water, limited by the element of this system with the least capacity as existing or under construction on July 1, 1993.

Statutory Authority G.S. 143-215.22G; 143-215.22I; 143B-282(a)(2).

.0402 JUDICIAL REVIEW

Judicial Review of the Commission's decision shall be as provided in G.S. 143-215.5.

Statutory Authority G.S. 143-215.5; 143B-282(a)(2).

Notice is hereby given in accordance with G.S. 150B-21.2 that the DEHNR - Division of Environmental Management intends to amend rules cited as 15A NCAC 2H .0901 - .0910, .0912, .0914 - .0917, adopt 2H .0918 - .0921.

The proposed effective date of this action is November 1, 1994.

The public hearing will be conducted at 2:00 p.m. on June 21, 1994 at the Archdale Building, Ground Floor Hearing Room, 512 N. Salisbury Street, Raleigh, NC.

Reason for Proposed Action: Modifications are being proposed to incorporate new State and Federal requirements, to update terminology, and to enhance the quality of the Pretreatment Program.

Comment Procedures: Comments may be submitted in writing prior to, during, or within three days after the hearing or may be presented orally at the hearing. Comments may be limited to three minutes at the discretion of the hearing

officer. Submittals of written copies of oral statements is encouraged. Written comments should be directed to Ms. Julia Storm, DEHNR, DEM, P. O. Box 29535, Raleigh, NC 27626-0535; Phone: (919) 733-5083, X522.

Fiscal Note: *These Rules affect the expenditure or revenues of local funds. A fiscal note was submitted to the Fiscal Research Division on April 21, 1994, OSBM on April 21, 1994, N.C. League of Municipalities on April 21, 1994, and N.C. Association of County Commissioners on April 21, 1994.*

SUBCHAPTER 2H - PROCEDURES FOR PERMITS: APPROVALS

SECTION .0900 - LOCAL PRETREATMENT PROGRAMS

.0901 PURPOSE

(a) The rules in this Section are designed to implement North Carolina General Statutes 143-215.3(a)(14) and 143-215.1 and provisions of the Federal Water Pollution Control Act (also known as the "Clean Water Act") regarding the pretreatment of industrial discharges into publicly owned treatment works (POTWs). They establish responsibilities of State and local government, industry, and the public to implement Pretreatment Standards to control pollutants which pass through or interfere with treatment processes in POTWs, which may contaminate sewage sludge, or which otherwise have an adverse impact on the POTW, its workers, or the environment. This Section is designed to provide procedures for submission, review, and approval of local pretreatment programs as well as procedures for the implementation of approved pretreatment programs. This Section also contains the requirements for variances from categorical pretreatment standards for fundamentally different factors.

(b) Copies of Regulations rules referenced in this Section may be obtained from the Division of Environmental Management, Water Quality Section at the following locations:

- (1) Pretreatment Offices
Archdale Building
P. O. Box 29535, 512 N. Salisbury St.,
Raleigh, N.C. 27626-0535
- (2) Raleigh Regional Office
3800 Barrett Dr.,

- (3) Raleigh, N.C. 27611
Asheville Regional Office
459 Woodfin St.,
Asheville, N.C. 28801
- (4) Mooresville Regional Office
919 N. Main St.,
Mooresville, N.C. 28115
- (5) Fayetteville Regional Office
Wachovia Bldg. Suite 714,
Fayetteville, N.C. 28301
- (6) Washington Regional Office
1424 Carolina Avenue,
Washington, N.C. 27889
- (7) Wilmington Regional Office
127 Cardinal Drive Extension 7225
Wrightsville Ave.,
Wilmington, N.C. 28405-3845
- (8) Winston-Salem Regional Office
8025 North Point Blvd.,
Winston-Salem, N.C. 27106

(a) Unless otherwise defined in Paragraph (b) of this Rule, the definitions promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.3 are hereby adopted incorporated by reference including as amended through March 1, 1987 or any later adopted subsequent amendments or and editions of this document as is allowed by G.S.150B-14(e). This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, Pretreatment Offices, Archdale Building, P. O. Box 29535, 512 N. Salisbury St., Raleigh, NC 27626-0535. Copies may be obtained from the US Government Printing Office Bookstore, P. O. Box 56445, Atlanta, Georgia 30343, phone number (404) 331-6947 at a cost of twenty-six dollars (\$26.00).

(b) For this Rule Regulation the following definitions in addition to those incorporated by reference in Paragraph .0903(a) of this Rule shall apply:

- (1) "Approval Authority" means the Director of the Division of Environmental Management of the North Carolina Department of Environment, Health, and Natural Resources, or his/her designee.
- (2) (+) "Average" means the value calculated by dividing the sum of the data values collected over a time period by the number of data points which comprise the sum.
- (3) "Bypass" is the intentional diversion of waste streams from any portion of a pretreatment facility.
- (4) (2) "Commission" means the Environmental Management Commission of the North Carolina Department of Environment, Health, and Natural Resources and Community Development or its successor.
- (3) "Committee" means the NPDES committee of the Environmental Management Commission.
- (5) "Compliance Judgment Point" or "CJP" is the term used for a value used in calculating significant non-compliance. Compliance judgment points are calculated by summing the number of individual sample values for a parameter and the number of averages of sample values calculated for the same parameter during a six-month compliance judgment period.

Statutory Authority G.S. 143-215.3(a)(14).

0902 SCOPE

These Rules apply to:

- (1) Pollutants from non-domestic sources covered by Pretreatment Standards which are indirectly discharged into or transported by truck or rail or otherwise introduced into POTWs as defined in 40 CFR 403.3 and Rule .0903 of this Section;
- (2) POTWs which receive wastewater from sources subject to Pretreatment Standards; and
- (3) Any new or existing source subject to Pretreatment Standards. Pretreatment Standards do not apply to sources which discharge to a sewer which is not connected to a POTW treatment plant.

~~The Section applies to nondomestic pollutants covered by 15A NCAC 2B .0405(a) discharged to or otherwise transported by truck or rail or otherwise introduced into POTWs; to POTWs which receive wastewater from sources subject to pretreatment standards established in 15A NCAC 2B .0405(a), to any new or existing sources subject to pretreatment standards; and to POTWs which receive wastewater from sources subject to pretreatment standards established in compliance with 15A NCAC 2B .0909.~~

Statutory Authority G.S. 143-215.3(a)(14).

0903 DEFINITION OF TERMS

- (6) (4) "Control Authority" refers to:
 - (A) the POTW if the POTW's submission for its pretreatment program has been approved and that approval has not been subsequently withdrawn, or;
 - (B) the approval authority if the submission has not been approved or the Division has subsequently withdrawn pretreatment program approval.
- (7) (5) "Division" refers to the North Carolina Department of Environment, Health, and Natural Resources and Community Development, Division of Environmental Management.
- (8) "Enforcement Response Plan" or "ERP" means the POTW pretreatment program document describing the guidelines for identifying violations of and enforcing specific local limits and other pretreatment standards and requirements.
- (9) (6) "EPA" means the United States Environmental Protection Agency.
- (10) "Fundamentally Different Factors" are factors upon which a variance from a National Categorical Pretreatment Standard may be granted. These factors are those relating to an industrial user that are fundamentally different from the factors considered during development of a National Categorical Pretreatment Standard applicable to that user and that may justify a different discharge limit than specified in the applicable National Categorical Pretreatment Standard.
- (11) "Headworks Analysis" or "HWA" is the analysis used to calculate the maximum allowable POTW influent loadings for pollutants of concern based on pass-through, interference, sludge, or worker safety and health considerations. The headworks analysis is the technical basis for deriving local limits applied to industrial users.
- (7) "IDMR Form" or "IDMR" means the indirect discharger monitoring reporting form.
- (12) "Industrial Waste Survey" refers to the periodic survey of the users of the POTW performed by the POTW to determine those users meeting the criteria for Significant Industrial User status.
- (13) "Interference" refers to inhibition or disruption of the POTW treatment processes; operations; or its sludge process, use, or disposal which causes or contributes to a violation of any requirement of the POTW's NPDES or Non-Discharge Permit or prevents sewage sludge use or disposal in compliance with specified applicable State and Federal statutes, regulations, or permits.
- (14) "Long Term Monitoring Plan" or "LTMP" is the monitoring plan designed to collect POTW site-specific data for use in the Headworks Analysis.
- (15) "Medical Waste" refers to isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.
- (16) "National Categorical Pretreatment Standard" or "Categorical Standard" refers to any regulation containing pollutant discharge limits promulgated by EPA in accordance with sections 307(b) and (c) of the Act which applies to a specific category of industrial users, and which appears in 40 CFR Chapter 1, Subchapter N, Parts 405-471.
- (17) "National Prohibited Discharge Standard" is an absolute prohibition against the discharge of certain substances to the POTW, including both general and specific prohibitions.
- (18) "Net/Gross Calculation" is an adjustment of a categorical pretreatment standard to reflect the presence of pollutants in the industrial user's intake water.
- (19) "New Source" refers to:
 - (A) Any building, structure, facility, or installation from which there may be a discharge of pollutants, the construction of which commenced after the publication of proposed categorical pretreatment standards under section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with section 307(c), provided that:

- (i) the building, structure, facility, or installation is constructed at a site at which no other source is located; or
 - (ii) the building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
 - (iii) the production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.
- (B) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of Subparts (19)(A)(ii) or (iii) of this Rule but otherwise alters, replaces, or adds to existing process or production equipment.
- (C) For purposes of this definition, construction of a new source has commenced if the owner or operator has:
- (i) Begun, or caused to begin, as part of a continuous on-site construction program:
 - (I) Any placement, assembly, or installation of facilities or equipment; or
 - (II) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
 - (ii) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this definition.
- (20) "Noncontact Cooling Water" is water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product.
- (21) "Non-discharge Permit" is a permit issued by the State pursuant to G.S. 143-215.1(d) for a waste which is not discharged directly to surface waters of the State or for a wastewater treatment works which does not discharge directly to surface waters of the State.
- (22) "Operator in Responsible Charge" is the operator designated to fulfill the requirements of G.S. 90A-44.
- (23) "Pass Through" means a discharge which exits the POTW into waters of the State in quantities or concentrations which, alone or with discharges from other sources, causes a violation, including an increase in the magnitude or duration of a violation, of the POTW's NPDES permit or Non-discharge permit, or of an instream water quality standard.
- (24) "Permit Synopsis" refers to a document compiling information from the pretreatment permit application and industry inspection and providing the rationale for the pretreatment permit limits.
- (25) "Pollutant" includes any waste defined in G.S. 143-213(18); dredged spoil; solid waste; incinerator residue; garbage; sewage sludge; munitions; medical wastes; chemical waste; biological materials; radioactive materials; heat; wrecked or discarded equipment; rock; sand; cellar dirt; municipal and agricultural waste; and certain characteristics of wastewater, such as pH, temperature, TSS,

- turbidity, color, BOD, COD, toxicity, and odor.
- (26) "Pollutant of Concern" or "POC" is a pollutant identified as being of concern to the POTW for purposes of the pretreatment program; pollutants of concern may include but not be limited to conventional wastewater pollutants, such as BOD, TSS, or ammonia; any of the priority pollutants; and any pollutant that may be identified as a source of interference, pass through, whole effluent toxicity, or sludge contamination.
- (27) "POTW", or Publicly Owned Treatment Works, means a treatment works as defined by Section 212 of the Federal Clean Water Act (CWA), which is owned by a State or local government entity. This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the local government entity, or municipality, as defined in section 502(4) of the CWA, which has jurisdiction over indirect discharges to and the discharges from such a treatment works.
- (28) (8) "POTW Director" means the chief administrative officer of the publicly owned treatment works or his/her delegate.
- (29) "Pretreatment" refers to the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration can be obtained by physical, chemical, or biological processes, or process changes or other means, except as prohibited by 40 CFR Section 403.6(d).
- (30) "Pretreatment Standard" is any prohibited discharge standard, categorical standard, or local limit which applies to an industrial user.
- (31) "Process Wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product.
- (32) "Removal Credits" are credits, available under certain conditions, that are applicable to categorical industrial users and are used to adjust categorical standards in such a way as to reflect POTW consistent removal of a particular pollutant.
- (33) "Sewer Use Ordinance" or "SUO" means the local government entity ordinance providing the legal authority for administering the pretreatment program.
- (34) (9) "Significant Industrial User" or "SIU" means a an industrial user facility which that discharges wastewater into a publicly owned treatment works and which that:
- (A) upon the effective date of this Rule until January 1, 1996, discharges an average of 50,000 gallons or more per day of process wastewater to the POTW; effective January 1, 1996, that has discharges an average of daily ~~process wastewater flow of~~ greater than 50,000 ~~25,000~~ gallons or more per day of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewaters) or;
 - (B) contributes more than 5 percent of the design flow of the POTW treatment plant or more than 5 percent of the maximum allowable headworks loading ~~any design capacity of the wastewater of the~~ POTW treatment plant for any pollutant of concern which receives the discharge, or;
 - (C) is required to meet a national categorical pretreatment standard, or;
 - (D) is, regardless of Parts (A), (B), and (C) of this definition, otherwise determined by the control authority to have a reasonable potential ~~to~~ for adversely impact affecting the POTW's operation or for violating any pretreatment standard or

requirement wastewater treatment plant or POTW's receiving stream standard, or to limit the POTW's sludge disposal options; or;

(E) ~~has been included in the monitoring program submitted in accordance with .0906 of this Section provided such IU has not been eliminated through .0907(b) and (c) of this Section.~~

(35) (10) "Reportable Significant Noncompliance" or "SNC" is the status of noncompliance of an industrial user when one or more of the following criteria are met: ~~is the criteria which shall be used for semiannual noncompliance reports as outlined in .0908(b)(4) of this Section and shall include:~~

(A) ~~Violations of wastewater discharge limits.~~ (i) Chronic violations of wastewater discharge limits, defined here as those in which Sixty sixty-six percent or more of the measurements taken during a six-month period exceed (by any magnitude) the same daily maximum limit or and the same average limit for the same pollutant parameter; this percentage is determined by dividing the total number of violations for the parameter by the number of compliance judgment points for the parameter in a six-month period;

(B) (ii) Technical Review Criteria (TRC) violations, defined here as those in which Thirty-three thirty-three percent or more of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable are more than the TRC; times the limit (maximum or average) in a six-month period. There are two groups of TRCs: (TRC = 1.4 for For conventional pollutants BOD, TSS, fats, oil and grease, TRC = 1.4; For all other pollutants, TRC = 1.2 for all other pollutants (except pH); this percentage is determined by dividing the total number of TRC violations

for the parameter by the number of compliance judgment points for the parameter;

(C) (iii) ~~Any other violation(s) of an a pretreatment effluent limit (average or daily maximum or longer-term average) that the Control Authority believes determines has caused, alone or in combination with other discharges, interference or pass-through (including endangering the health of POTW personnel or the general public); or endangered the health of the sewerage treatment plant personnel or the public.~~

(D) (iv) ~~Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under Paragraph (f)(1)(vi)(B) of 40 CFR 403.8 to halt or prevent such a discharge;~~

(E) ~~(B) Failure to meet, within 90 days after the schedule date, a Violations of compliance schedule milestones contained in a pretreatment permit or enforcement order; for starting construction, completing construction, or attaining final compliance; by 90 days or more after the schedule date.~~

(F) ~~(C) Failure to provide, within 30 days after the due date, required reports such as for compliance schedules, self-monitoring data, baseline monitoring reports, 90-day compliance reports, and periodic self-monitoring compliance reports, and reports on compliance with compliance schedules; within 30 days from the due date.~~

(G) ~~(D) Failure to accurately report noncompliance;~~

(H) ~~(E) Any other violation or group of violations that the Control Authority considers to be significant determines will adversely affect the operation or implementation of the local pretreatment program.~~

(36) (11) "Staff" means the staff of the Division of Environmental Management, Department of Environment, Health, and Natural

Resources and Community Development.

- (37) "Upset" is an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the industrial user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- (38) "Waste reduction" means source reduction and environmentally sound recycling.
- (39) "Wastewater" means the liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities, mobile sources, treatment facilities and institutions, together with any groundwater, surface water, and storm water that may be present, whether treated or untreated, which are contributed into or permitted to enter the POTW.
- (40) "Waters of the State" are all streams, rivers, brooks, swamps, sounds, tidal estuaries, bays, creeks, lakes, waterways, reservoirs, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained in, flow through, or border upon the State or any portion thereof.

Statutory Authority G.S. 143-215.3(a)(1),(14); 150B-21.6.

.0904 REQUIRED PRETREATMENT PROGRAMS

(a) The Regulations covering regarding pretreatment program development by the POTW promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.8(a) through 40 CFR Part 403.8(e) are hereby adopted incorporated by reference including as amended through March 1, 1987 or any later adopted subsequent amendments or and editions of this document as is allowed by G.S.150B-14(e). This material is available for inspection at the Department of Environment, Health, and

Natural Resources, Division of Environmental Management, Pretreatment Offices, Archdale Building, P. O. Box 29535, 512 N. Salisbury St., Raleigh, NC 27626-0535. Copies may be obtained from the US Government Printing Office Bookstore, P. O. Box 56445, Atlanta, Georgia 30343, phone number (404) 331-6947 at a cost of twenty-six dollars (\$26.00).

(b) The Division may allow a POTW having a combined design flow less than 2 million gallons per day and having fewer than four Significant Industrial Users to develop and implement a Modified Pretreatment Program that encompasses a portion of the requirements in Rules .0905 and .0906 of this Section, as designated by the Director. A POTW having a combined design flow less than 2 million gallons per day and having fewer than four Significant Industrial Users may request that the Director consider the POTW for Modified Pretreatment Program status prior to January 1, 1996 only if the POTW demonstrates that all SIU's meeting the definition of SIU that is effective January 1, 1996 have been identified and permitted, if necessary. In making the decision to allow Modified Pretreatment Program development and implementation, the Director may consider factors including but not limited to percent industrial flow, industrial waste characteristics, compliance status of the facility, and the potential for industrial growth.

Statutory Authority G.S. 143-215.1(a),(b); 143-215.3(a)(14); 150B-21.6.

.0905 POTW PRETREATMENT PROGRAM REQUIREMENTS

Except where specified differently in this Section, the The POTW pretreatment program requirements promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.8(f) are hereby adopted incorporated by reference including as amended through March 1, 1987 or any later adopted subsequent amendments or and editions of this document as is allowed by G.S.150B-14(e). This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, Pretreatment Offices, Archdale Building, P. O. Box 29535, 512 N. Salisbury St., Raleigh, NC 27626-0535. Copies may be obtained from the US Government Printing Office Bookstore, P. O. Box 56445, Atlanta, Georgia 30343, phone number (404) 331-6947 at a cost of twenty-six

dollars (\$26.00). In general, the implementation of a pretreatment program involves the updating of the Sewer Use Ordinance (SUO); on-going industrial waste survey activities; updating of the Headworks Analysis (HWA), or technical basis for local limits; implementation of the Long Term Monitoring Plan (LTMP); on-going implementation of compliance activities, including sampling and inspection of significant industrial users; implementation of the Enforcement Response Plan (ERP), and periodic reporting to the Division on pretreatment program activities.

Statutory Authority G.S. 143-215.1(a),(b); 143-15.3(a)(1),(14); 150B-21.6; 153A-274; 153A-75; 160A-311; 160A-312.

0906 SUBMISSION FOR APPROVAL

(a) Except where in conflict with any part of this Section, the regulations covering the contents of pretreatment programs submitted for approval and the contents of a request to revise national categorical pretreatment standards, promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.9 are hereby adopted and incorporated by reference including as amended through March 1, 1987 or any later adopted subsequent amendments or editions of this document as is allowed by G.S. 150B-14(e). This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, Pretreatment Offices, Archdale Building, P. O. Box 29535, 512 N. Salisbury St., Raleigh, NC 27626-0535. Copies may be obtained from the US Government Printing Office Bookstore, P. O. Box 56445, Atlanta, Georgia 30343, phone number (404) 331-6947 at a cost of twenty-six dollars (\$26.00). In general, pretreatment program development submissions include a Sewer Use Ordinance (SUO) providing the legal authority for implementing the pretreatment program, an attorney's statement, a description of the POTW organization which will administer the pretreatment program, and a description of funding levels and full- and part-time staffing available to implement the pretreatment program in addition to those items listed in Paragraph (b) of this Rule.

(b) In addition to the contents of a POTW pretreatment program submission from described

in ~~0906~~ Paragraph (a) of this Rule, the program submission must shall contain:

- (1) an Industrial Waste Survey (IWS), or industrial user survey, as required by 40 CFR 403.8 (f) (2) (i-iii) and 15A NCAC 2H .0905, including identification of all industrial users and the character and amount of pollutants contributed to the POTW by these industrial users and identification of those industrial users meeting the definition of Significant Industrial User;
- (2) technical information (including specific data required to specify violations of the discharge prohibitions in 40 CFR 403.5(a) and (b) and 15A NCAC 2H .0909) necessary to develop an industrial waste ordinance or other means of enforcing pretreatment standards;
- (2) a Long Term Monitoring Plan (LTMP) to provide POTW site-specific data for the HWA and subsequent technical evaluations of local limits to satisfy the requirements of 40 CFR 122.21(j);
- (3) a Headworks Analysis (HWA) and supporting documentation, including POTW site-specific and relevant literature data, upon which to base industrial user-specific effluent limits and other local limits specific POTW effluent limitations for prohibited pollutants (as defined in 40 CFR 403.5(a) and (b) and 15A NCAC 2H .0909); contributed to the POTW by industrial users and the technical basis for these limitations;
- (4) the design of a compliance monitoring program, including inspection, sampling, equipment, and other compliance procedures, which will implement the requirements of 40 CFR 403.8(f) and 403.12, and 15A NCAC 2H .0905 and .0908;
- (5) draft industrial user pretreatment permits for Significant Industrial Users and supporting documentation outlined in .0917 of this Section a list of monitoring equipment required by the POTW to implement the pretreatment program and a description of municipal facilities to

~~be constructed for monitoring and analysis of industrial waste;~~

- (6) procedures for approving the construction of pretreatment facilities by industrial users and for permitting industrial users for construction, operation and discharge as required by NCGS G.S. 143-215.1; procedures for approving construction shall include issuance of authorization to construct, as appropriate;

(A) ~~having a professional engineer, licensed to practice in this state, on the POTW staff (or retained as a consultant to review unusual situations or designs and/or;~~

(B) ~~having such situations referred to the Division for review and approval;~~

- (7) an enforcement Enforcement Response Plan (ERP) as required by 40 CFR 403.8(f)(5) management strategy for identifying violations of and enforcing specific local limits as required by and specified in 40 CFR 403.5 and 403.6 and ~~15A NCAC 2H Rules .0909 and .0910 of this Section; and~~

- (8) a description of data management procedures for compiling and managing compliance, LTMP, and any other pretreatment-related monitoring data; and

- (9) ~~(8)~~ a request for pretreatment program approval as required by 40 CFR 403.9 and ~~15A NCAC 2H Rule .0900 of this Section.~~

(c) The POTW must submit three bound copies of the program containing the information in ~~0906 Paragraphs~~ (a) and (b) of this Rule to the Division of Environmental Management.

Statutory Authority G.S. 143-215.1(a),(b); 143-215.3(a)(1), (14); 150B-21.6.

.0907 PROGRAM APPROVAL PROCEDURES: REVISION AND WITHDRAWAL

(a) Procedures for approval of a POTW pretreatment program and for removal credit authorization are as follows:

- (1) Except where in conflict with any part of this Section, the The approval procedures for POTW pretreatment programs and applications for removal credit authorization promulgated by the Environmental Protection Agency

and codified as 40 CFR Part 403.11 are hereby adopted incorporated by reference including as amended through March 1, 1987 or any later adopted subsequent amendments or and editions of this document as is allowed by G.S. 150B-14(e). This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, Pretreatment Offices, Archdale Building, P. O. Box 29535, 512 N. Salisbury St., Raleigh, NC 27626-0535. Copies may be obtained from the US Government Printing Office Bookstore, P. O. Box 56445, Atlanta, Georgia 30343, phone number (404) 331-6947 at a cost of twenty-six dollars (\$26.00).

- (2) Upon program approval, a POTW is delegated, subject to the provisions of Rules .0916 and .0917 of this Section, the authority to issue the construction, operation and discharge permits required by G.S. 143-215.1(a) for those Significant Industrial Users discharging or proposing to discharge to the POTW.

(b) Either the Division or the POTW may initiate program revisions. The POTW must submit a request to the Division for ~~shall keep the division fully informed of any proposed approval of~~ modifications to its approved pretreatment program, including, but not limited to its legal authority, or Sewer Use Ordinance (SUO), Headworks Analysis (HWA), Long Term Monitoring Plan (LTMP), Enforcement Response Plan, summary of Industrial Waste Survey, its Division-approved forms, and procedures and priorities. Revisions to an approved pretreatment program shall be accomplished as follows:

- (1) the POTW shall submit a modified program description, an attorney's statement if the legal authority of the program is being modified, and other documents as the Director determines to be necessary under the circumstances;
- (2) whenever the Director determines that the proposed program modifications are substantial, the Division shall issue public notice and provide an opportunity for public comment as

described in 15A NCAC 2H .0109 and .0110; public notices issued by the Control Authority are deemed sufficient notice;

- (3) the Director or his/her delegate shall approve or disapprove program revisions based on the requirements of this Section, NCGS G.S. 143-215.1, NCGS G.S. 143-215.3 and the Water Quality Memorandum of Agreement between the Division and the EPA;
- (4) a pretreatment program revision shall become effective upon written approval of the Director.

(c) Revision to the POTW's Significant Industrial Users (SIU) list shall be made using the procedure outlined in ~~.0907~~ Paragraph (b) of this Rule. The SIU list may be revised at any time, provided sufficient documentation as required by the Division is supplied and supports such a determination, and Requests for deletion of SIUs from the SIU list shall be accompanied by include documentation which shows:

- (1) the industrial user does not ~~fit~~ meet the criteria outlined in Subparagraph .0903(b)(934)(A) through (D) of Rule .0903 of this Section; and or
- (2) the industrial user meets the criteria outlined in Parts (b)(34)(A) or (B) of Rule .0903 of this Section and the industrial user no longer discharges nondomestic wastewater to POTW, or;
- (3) the industrial user discharges wastewater with pollutant levels which are consistently less than or equal to the levels associates with domestic sewage, or;
- (4) the industrial user discharges wastewater which is consistently below pretreatment standards and the wastewater treatment plant receiving the discharge has a significant available reserve capacity for flow and all pollutants reasonably expected to be in the industrial user's discharge.

(d) The Director may withdraw pretreatment program approval when a POTW no longer complies with requirements of this Section and the POTW fails to take corrective action. The following procedures apply when the Director ~~director~~ determines that program withdrawal may be needed:

- (1) The Director shall give the POTW 180 days notice of the program withdrawal;
- (2) the POTW shall submit within 60 days of such notice a plan for the orderly transfer of all relevant program information not in the possession of the Division (such as permit files, compliance files, reports and permit applications) which is necessary for the Division to administer the pretreatment program;
- (3) within 60 days of the receipt of the POTW transfer plan the Director shall evaluate the POTW plan and shall identify any additional information needed by the Division for program administration or and/or identify any other deficiencies in the plan;
- (4) at least 30 days before the program withdrawal the Director shall publish public notice of the program transfer and shall mail notice to all pretreatment permit holders of the POTW.

(e) Applications for removal credit authorization shall be made in accordance with procedures established by the Division. Approval shall become effective upon written approval of the Director.

(f) A pretreatment program is considered inactive when industrial users defined as Significant Industrial Users no longer discharge to the POTW, based on modifications of the pretreatment program approved by the Division. When required by the Division to return to active status, a POTW may be required to update any or all of the requirements listed in Rule .0906 of this Section.

(g) The Division may require that representatives of Modified Pretreatment Programs developed under Paragraph (b) of Rule .0904 of this Section meet with Division personnel periodically to discuss implementation of and revisions to their Modified Pretreatment Program.

Statutory Authority G.S. 143-215(a); 143-215.1(a), (c); 143-215.3(a)(3), (14), (e); 150B-21.6.

.0908 REPORTING AND RECORD KEEPING REQUIREMENTS FOR POTWS AND INDUSTRIAL USERS

- (a) Except where in conflict with any part of this Section, the ~~The~~ regulations covering

regarding the reporting requirements for POTWs and industrial users promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.12 are hereby adopted incorporated by reference including as amended through March 1, 1987 or any later adopted subsequent amendments or and editions of this document as is allowed by G.S. 150B-14(e). This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, Pretreatment Offices, Archdale Building, P. O. Box 29535, 512 N. Salisbury St., Raleigh, NC 27626-0535. Copies may be obtained from the US Government Printing Office Bookstore, P. O. Box 56445, Atlanta, Georgia 30343, phone number (404) 331-6947 at a cost of twenty-six dollars (\$26.00).

(b) POTWs with active approved pretreatment programs shall submit twice once per year a pretreatment report describing its pretreatment activities over the previous six 12 months. Two copies of each pretreatment report shall be submitted to the Division according to one of the following schedules; a report shall be submitted to the Division by August September 1 of each year describing pretreatment activities for two six-month periods, January 1 through June 30 of that year and July 1 to December 31 of the previous year; and or a like report shall be submitted by February March 1 of each year for activities conducted from for two six-month periods, January 1 through June 30 and July 1 through December 31 of the previous year. The POTW shall be notified by the Division as to which schedule to follow. These This annual report reports shall contain the following information in accordance with forms and guidance specified by the Division:

- (1) a narrative summary of actions taken by the permittee to ensure compliance with pretreatment requirements;
- (2) ~~a list of any substantive changes to be made in the approved program;~~
- (2) ~~(3) compliance status a pretreatment program summary on forms or in a format approved by the Division of all Significant Industrial Users;~~
- (3) ~~(4) a list of all those Significant Industrial Users including the permit status; compliance status; and, if in noncompliance with pretreatment requirements, the nature of the violations, and actions taken or proposed to~~

- (4) correct the violations; on forms or in a format approved by the Division; an allocation table listing permit information for all Significant Industrial Users, including but not limited to permit limits, permit effective and expiration dates, and a comparison of total permitted loads to the Division approved maximum allowable loadings of the POTW, on forms or in a format approved by the Division;
- (5) other information which in the opinion of the Director is needed to determine compliance with the implementation of the pretreatment program, including, but not limited to, Significant Industrial User compliance schedules, public notice of Significant Industrial Users in significant noncompliance, a summary of Significant Industrial User effluent monitoring data as described in Paragraph (f) of this Rule, and Long Term Monitoring Plan data on forms or in a format approved by the Division; sampling and analytical results recorded on forms approved by the Director.
- (6) a description of all POTW and Significant Industrial User waste reduction activities.
- (c) Inactive pretreatment programs are not required to submit the report described in Paragraph (b) of this Rule. Inactive approved pretreatment programs shall notify the Division when a Significant Industrial User proposes to discharge to the POTW.
- (e d) Samples shall be collected and analyzed by the POTW staff independent of the industry for each Significant Industrial User:
 - (1) for all permit-limited parameters, except those listed in Paragraph (d)(2) of this Rule, a minimum of twice each year, once during each six-month six month-reporting period in Paragraph (b) of this Rule;
 - (2) for organic compounds limited in the Significant Industrial User permits, a minimum of once each year. If the POTW elects to sample and analyze in lieu of the industry, the POTW shall collect and analyze at a minimum samples as described in this Rule and, if applicable, in accordance with categorical standards. Independent monitoring of the industry by the

POTW is not required for pollutants which are limited by a categorical standard for which specific certification or other alternative procedures apply.

(d e) For the purpose of indicating the nature and concentration of the industries' discharges in the baseline reports, deadline compliance reports and periodic compliance reports required in Paragraph (a) of this Rule the following shall apply:

- (1) analyses shall be completed on all pollutants which are limited by the categorical standard unless the categorical standard contains specific certification or other alternative procedures for specific pollutants;
- (2) compliance with a monthly average limitation shall be shown every six months by the analysis of a sufficient ~~amount~~ number of samples to be representative of the industry's monthly discharge; ~~this shall include a minimum of four samples.~~

(e f) POTWs and Industrial Users shall retain for a minimum of three years records of monitoring activities and results along with support information including annual pretreatment reports, general records, water quality records, and records of industrial impact on the POTW. Support information for pretreatment permits shall be retained for five years. A summary of all Significant Industrial User effluent monitoring data reported to the POTW by the Industrial User or obtained by the POTW shall be maintained on Division-approved forms or in a format approved by the Division for review by the Division.

(g) In lieu of submitting annual reports, Modified Pretreatment Programs developed under Paragraph (b) of Rule .0904 of this Section may be required to meet with Division personnel periodically to discuss enforcement of pretreatment requirements and other pretreatment implementation issues.

Statutory Authority G.S. 143-215.1(a),(b); 143-215.2; 143-215.3(a)(2), (14); 143-215.6A(a)(1); 143-215.63 through 143-215.67; 143-215.69; 150B-21.6.

.0909 NATIONAL PRETREATMENT STANDARDS: PROHIBITED DISCHARGES

The regulations regarding covering national ~~prohibitive prohibited~~ pretreatment standards and local limits development and enforcement promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.5 are hereby adopted incorporated by reference including as amended through March 1, 1987 or any later adopted subsequent amendments or and editions of this document as is allowed by G.S.150B-14(e). This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, Pretreatment Offices, Archdale Building, P. O. Box 29535, 512 N. Salisbury St., Raleigh, NC 27626-0535. Copies may be obtained from the US Government Printing Office Bookstore, P. O. Box 56445, Atlanta, Georgia 30343, phone number (404) 331-6947 at a cost of twenty-six dollars (\$26.00).

Statutory Authority G.S. 143-215.1(a)(7); 143-215.1(b); 143-215.3(a)(1),(14); 150B-21.6.

.0910 NATIONAL PRETREATMENT STANDARDS: CATEGORICAL STANDARDS

The regulations regarding covering national categorical pretreatment standards promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.6 are hereby adopted incorporated by reference including as amended through March 1, 1987 or any later adopted subsequent amendments or and editions of this document as is allowed by G.S.150B-14(e). This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, Pretreatment Offices, Archdale Building, P. O. Box 29535, 512 N. Salisbury St., Raleigh, NC 27626-0535. Copies may be obtained from the US Government Printing Office Bookstore, P. O. Box 56445, Atlanta, Georgia 30343, phone number (404) 331-6947 at a cost of twenty-six dollars (\$26.00).

Statutory Authority G.S. 143-215.1(a)(7); 143-215.1(b); 143-215.3(a)(14); 150B-21.6.

.0912 ADJUSTMENTS FOR FUNDAMENTALLY DIFFERENT FACTORS

The regulations regarding covering variances from national categorical pretreatment standards for fundamentally different factors promulgated

by the Environmental Protection Agency and codified as 40 CFR 403.13 are hereby ~~adopted~~ incorporated by reference ~~including as amended through March 1, 1987 or any later adopted subsequent amendments or and editions of this document as is allowed by G.S.150B-14(e).~~ This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, Pretreatment Offices, Archdale Building, P. O. Box 29535, 512 N. Salisbury St., Raleigh, NC 27626-0535. Copies may be obtained from the US Government Printing Office Bookstore, P. O. Box 56445, Atlanta, Georgia 30343, phone number (404) 331-6947 at a cost of twenty-six dollars (\$26.00).

Statutory Authority G.S. 143-215(a); 143-215.1(a),(b); 143-215.3(a),(14),(e); 150B-21.6.

.0914 UPSET PROVISION

The upset provision promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.16 is hereby ~~adopted~~ incorporated by reference ~~including as amended through March 1, 1987 or any later adopted subsequent amendments or and editions of this document as is allowed by G.S.150B-14(e).~~ This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, Pretreatment Offices, Archdale Building, P. O. Box 29535, 512 N. Salisbury St., Raleigh, NC 27626-0535. Copies may be obtained from the US Government Printing Office Bookstore, P. O. Box 56445, Atlanta, Georgia 30343, phone number (404) 331-6947 at a cost of twenty-six dollars (\$26.00).

Statutory Authority G.S. 143-215.3(a)(1); 143-215.3(a)(14); 150B-21.6.

.0915 NET/GROSS CALCULATION

The net/gross calculation provisions promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.15 are hereby ~~adopted~~ incorporated by reference ~~including as amended through March 1, 1987 or any later adopted subsequent amendments or and editions of this document as is allowed by G.S.150B-14(e).~~ This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, Pretreatment Offices, Archdale Building, P. O. Box 29535,

512 N. Salisbury St., Raleigh, NC 27626-0535. Copies may be obtained from the US Government Printing Office Bookstore, P. O. Box 56445, Atlanta, Georgia 30343, phone number (404) 331-6947 at a cost of twenty-six dollars (\$26.00).

Statutory Authority G.S. 143-215.3(a)(1); 143-215.3(a)(14); 150B-21.6.

.0916 PERMITS

(a) All Significant Industrial Users who discharge waste into a POTW or who construct or operate a pretreatment facility must obtain a permit from the Control Authority.

(b) Where the Division is the Control Authority permits shall be issued in accordance with Section .0100 of this Subchapter.

(c) Where the POTW is the Control Authority, Significant Industrial User permits shall be issued as follows:

- (1) Application: any Significant Industrial User required to obtain a permit in .0916(a) above shall be required to complete, sign and submit to the Control Authority a permit application. Application fees and procedures may be prescribed by the Control Authority. All pretreatment permit applications shall include as a minimum:
 - (A) name of industry;
 - (B) address of industry;
 - (C) standard industrial classification (SIC) code(s) or expected classification and industry category;
 - (D) wastewater flow;
 - (E) types and concentrations (or mass) of pollutants contained in the discharge;
 - (F) major products manufactured or services supplied;
 - (G) description of existing on-site pretreatment facilities and practices;
 - (H) locations of discharge points;
 - (I) raw materials used or stored at the site;
 - (J) flow diagram or sewer map for the industry;
 - (K) number of employees;
 - (L) operation and production schedules;
 - (M) description of waste reduction activities being utilized.
- (2) Renewals: Applications for pretreatment permit renewals shall be

accomplished by filing an appropriate application form as listed in .0916 (c)(1) prior to permit expiration. The number of days prior to expiration by which the application must be filed shall be established by the Control Authority.

(3) Review and Evaluation:

- (A) The POTW Director is authorized to accept applications for the Commission and shall refer all applications to the POTW staff for review and evaluation.
- (B) The POTW Director shall acknowledge receipt of a complete application, or if not complete, shall return the application to the applicant with a statement of what additional information is required.
- (C) The POTW staff shall include as part of the permit record documentation of an on site inspection of the industrial facility and any existing wastewater pretreatment system. Such inspection shall have been conducted a maximum of 12 months prior to the issue date of the pretreatment permit.
- (D) The POTW staff shall conduct an evaluation and make a tentative determination to issue or deny the permit. If the POTW staff's tentative determination is to issue the permit, it shall make the following additional determinations in writing and transmit them to the permittee:
 - (i) proposed effluent limitations for those pollutants proposed to be limited;
 - (ii) a proposed schedule of compliance, including interim dates and requirements, for meeting the proposed effluent limitations; and
 - (iii) a brief description of any other proposed special conditions which will have significant impact upon the discharge described in the application.

The POTW staff shall organize the determinations made into a pretreatment permit.

- (4) Permit synopsis and allocation table: A brief synopsis of the application and

permit shall be prepared by the POTW staff for all Significant Industrial User permits. This synopsis shall be maintained in the POTW files in accordance with Rule .0908(f) of this Section. The synopsis and allocation table shall be sent to the Division along with the pretreatment permit if required in Rule .0917 of this Section. An allocation table listing permit information for all Significant Industrial users, including but not limited to permit limits, permit effective and expiration dates, and a comparison of total permitted loads with Division approved maximum allowable loadings of the POTW, shall be prepared on forms or in a format approved by the Division and updated as permits are issued, modified, or renewed. The contents of the synopsis shall include at least the following information:

- (A) a copy of the completed industrial user application or a quantitative description of the discharge described in the application which includes at least the following:
 - (i) the rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow;
 - (ii) the average daily discharge in pounds per day of any pollutants which are present in significant quantities or which are subject to limitations or prohibition.
- (B) the basis, or rationale, for the pretreatment limitations including the documentation of any calculations used in applying categorical pretreatment standards; and
- (C) a copy of the record of the inspection of the industrial user required in Part (c)(3)(C) of this Rule.
- (5) Hearings:
 - (A) Adjudicatory Hearings. An applicant whose permit is denied, terminated, or is granted subject to conditions he/she deems unacceptable, shall have the right to an adjudicatory hearing before the

POTW Director or a other hearing officer appointed by the POTW Director upon making written demand, identifying the specific issues to be ~~contested~~ contested, to the POTW Director within 30 days following notice of the final decision to deny or grant the permit. Unless such written demand is made, the decision on the application shall be final and binding, subject to the provisions of Rule .0917 of this Section, and further appeal is barred. For modified permits, only those parts of the permit being modified may be adjudicated. The POTW Director or other hearing officer, as appropriate, shall make a decision on the contested permit within the time period specified in the Control Authority's Sewer Use Ordinance. The POTW Director shall transmit a copy of the hearing officer's decision to the petitioner by registered or certified mail. If no further administrative appeal is provided by the governing body of the Control Authority under Part (c)(5)(B) of this Rule then the decision is a final decision for the purposes of seeking judicial review. An Official Record of the adjudicatory hearing must be prepared as described in Part (c)(5)(C) of this Rule.

- (i) New Permits. Upon appeal, including judicial review in the General Courts of Justice, of the terms or conditions of a newly issued permit, the terms and conditions of the entire permit are stayed and the permit is not in effect until either the conclusion of judicial review or until the parties reach a mutual resolution.
- (ii) Renewed or Modified Permits. Upon appeal, including judicial review in the General Courts of Justice, of the terms or conditions of a renewed or modified permit, the terms and conditions of the existing permit remain in effect until either the conclusion of judicial review or

until the parties reach a mutual resolution.

- (iii) Terminated Permits. Upon appeal, including judicial review in the General Courts of Justice, of a terminated permit, no permit is in effect until either the conclusion of judicial review or until the parties reach a mutual resolution.

- (B) Optional Appeal Hearings. If so provided by the governing body of the Control Authority, ~~Any~~ any decision of a hearing officer or POTW Director made as a result of an adjudicatory hearing held under ~~Part .0916~~(c)(5)(A) of this Rule may be appealed by ~~any~~ party, to the governing body of the Control Authority or other unbiased entity designated by the governing body of the Control Authority upon filing a written demand within ten days of receipt of notice of the decision. Failure to make written demand within the time specified herein shall bar further appeal. The governing body of the Control Authority or other unbiased entity, as appropriate, shall make a final decision on the appeal within the time period specified in the Control Authority's Sewer Use Ordinance. The governing body of the Control Authority or its designee shall transmit a written copy of its decision by registered or certified mail to the petitioner. This decision is a final decision for the purposes of seeking judicial review. An Official Record of the hearing must be prepared as described in Part (c)(5)(C) of this Rule.

- (C) Hearings held under this Subdivision shall be conducted using procedures prescribed by the Control Authority. Official Record. When a final decision for the purposes of judicial review is issued under Subparagraph (c)(5) of this Rule, the hearing officer shall prepare an official record of the case that includes:

- (i) All notices, motions, and other like pleadings;

- (ii) A copy of all documentary evidence introduced;
- (iii) A certified transcript of all testimony taken, if testimony is transcribed. If testimony is taken and not transcribed, then a narrative summary of any testimony taken;
- (iv) A copy of the final decision of the hearing officer.
- (D) ~~(E)~~ Judicial Review. Any person against whom a final decision of the hearing officer or POTW Director is entered, pursuant to the hearing(s) conducted under Subparagraph (c)(5) of this Rule, may seek judicial review of the decision, by filing a written petition within 30 days after receipt of notice by registered or certified mail of the final decision, but not thereafter, with the Superior Court of the appropriate county along with a copy to the Control Authority. Within 30 days after receipt of the copy of the petition of judicial review, the final decision maker shall transmit to the reviewing court the original or a certified copy of the official record.
- (6) Final Action on Permit Applications:
 - (A) The POTW Director shall take final action on all applications by either issuing a pretreatment permit or by denying the discharge not later than 90 days following the receipt of a complete application. If, following the 30 day period required by ~~0916~~ Part (c)(5)(A) of this Rule and Rule .0917(b) of this ~~Section~~ Regulation, no written demand for hearing, objection, or request for more information under Rule .0917(f)(2) of this Section has been made, the permit shall become final and binding.
 - (B) The POTW Director is authorized to:
 - (i) issue a permit containing such conditions as are necessary to effectuate the purposes of G.S. 143-215.1;
 - (ii) issue a permit containing time schedules for achieving compliance with applicable pretreatment standards and limitations and other legally applicable requirements;
 - (iii) modify or revoke any permit pursuant to ~~0916~~ Subparagraph(c)(7) of this Rule;
 - (iv) deny a permit application;
 - (v) issue permits to industrial users not identified as Significant Industrial Users using procedures prescribed by the Control Authority;
 - (vi) require Significant Industrial Users to develop a waste reduction plan and implement waste reduction techniques and technologies.
- (C) Permits shall be issued or renewed for a period of time deemed reasonable by the POTW Director but in no case shall the period exceed five years.
- (D) The POTW Director shall notify an applicant by certified or registered mail of the denial of his/her permit application. Notifications of denial shall specify the reasons therefore and the proposed changes which in the opinion of the POTW Director will be required to obtain the permit.
- (7) Modification and Revocation of Permits:
 - (A) Any permit issued pursuant to this ~~Rule~~ Regulation is subject to revocation or modification in whole or part for good cause as outlined in the Control Authority's sewer use ordinance regulations.
 - (B) Modifications of permits shall be subject to the same procedural requirements as the issuance of permits except as follows:
 - (i) changes in the ownership of the discharge when no other change in the permit is indicated;
 - (ii) a single modification of any compliance schedule not in excess of four months;
 - (iii) modification of compliance schedules (construction schedules) in permits for new sources where the new source will not begin to discharge until control facilities are operational;

(iv) modifications of the monitoring requirements in the permit.

(C) Permit effective dates and modification dates shall not be retroactive.

Statutory Authority G.S. 143-215(a); 143-215.1(a), (c); 143-215.3(a)(3), (14), (e).

.0917 PRETREATMENT PERMIT REVIEW

(a) Each Upon issuance, each POTW shall transmit to the Division division copies of all issued Significant Industrial User pretreatment permits.

(b) For new Significant Industrial Users and for Significant Industrial Users identified as categorical industrial users, upon issuance, the POTW shall transmit to the Division:

(1) Notice of actions taken by the POTW to the consideration of any permit application including a copy of each pretreatment permit and any conditions, requirements or documents which are related to the pretreatment permit;

(2) A synopsis of the permit and an allocation table for the POTW receiving the discharge(s).

(b c) The Division shall have 30 days from the receipt of pretreatment permits in which to make general comments upon, objections to or recommendations with respect to the permit. Unless such an objection or request for more information in accordance with Paragraph (f) of this Rule is made, the permit shall be final and binding.

(e d) Within 30 days of the receipt of a pretreatment permit to which the Director has objected the staff shall set forth in writing and transmit to the control authority:

(1) A statement of the reasons for the objection, including the regulations that support the objection and;

(2) The actions which must be taken by the control authority to eliminate the objection including the effluent limitations and conditions which the permit would include if it were issued by the Division.

(d e) The Director's objection to the issuance of a pretreatment permit must be based upon one or more of the following grounds:

(1) the permit fails to apply or to ensure compliance with any applicable requirement of this Section;

(2) the procedures followed in connection with formulation of the pretreatment permit failed to comply with the procedures required by State Statute or by the POTW's approved pretreatment program;

(3) a finding made by the control authority in connection with the pretreatment permit which misinterprets any categorical pretreatment standard or pretreatment regulation or misapplies them to the facts;

(4) the provisions of the pretreatment permit resulting relating to the maintenance of records, monitoring or sampling by the permittee are, in the judgment of the Director, inadequate to assure compliance with permit conditions or applicable pretreatment standards.

(e f) Prior to notifying the POTW of ~~and an~~ objection the ~~director~~ Director:

(1) shall consider all data transmitted pursuant to Rule .0916 of this Section;

(2) may, if more information is needed to determine whether the ~~preliminary~~ permit is adequate, request the POTW to make available to the staff the complete record of permit proceedings, or any portions of the record that the Director determines are necessary for review. ~~If this request Requests must be~~ is made within 30 days of the state's receipt of the preliminary permit under Rule.0916 of this Section, and it shall constitute interim objection to the issuance of the permit and the full suspend the 30 day review period in .0917 Paragraph (bc) of this Rule, above shall recommence when When the staff has obtained ~~such the requested record records~~ or portions of the record, the staff shall have an additional 30 days for review; and

(3) may, in his/her discretion and to the extent feasible within the period of time available, afford interested persons the opportunity to comment on the basis for the objection.

(f g) If within 60 days of the receipt of the Director's objection the POTW does not resubmit a permit revised to meet the Director's objection, the Director may issue the permit in accordance with 15A NCAC 2H .0100.

Exclusive authority to issue the permit required by NCGSG.S. 143-215.1(a) passes to the Division when this time expires.

Statutory Authority G.S. 143-215(a); 143-215.1(a), (c); 143-215.3(a)(3), (14), (e).

.0918 LOCAL LAW

Nothing in the rules of this Section is intended to affect any pretreatment requirements, including any standards or prohibitions, established by local law as long as the local requirements are not less stringent than any set forth in National Pretreatment Standards, or any other requirements or prohibitions established under the Clean Water Act, the North Carolina General Statutes, or the rules of this Section.

Statutory Authority G.S. 143-215.1(a), (b); 143-215.3(a)(1), (14); 153A-274; 153A-275; 160A-311; 160A-312.

.0919 BYPASS

The regulations regarding the bypass provisions promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.17 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, Pretreatment Offices, Archdale Building, P. O. Box 29535, 512 N. Salisbury St., Raleigh, NC 27626-0535. Copies may be obtained from the US Government Printing Office Bookstore, P. O. Box 56445, Atlanta, Georgia 30343, phone number (404) 331-6947 at a cost of twenty-six dollars (\$26.00).

Statutory Authority G.S. 143-215.1(a)(1); 143-215.3(a)(14); 150B-21.6.

.0920 PRETREATMENT FACILITY OPERATION AND MAINTENANCE

(a) Upon classification of facilities permitted under this Section and upon development of specific certification and training programs for operators of classified facilities, the permittee must designate an Operator in Responsible Charge and a back-up operator as required by the Water Pollution Control System Operators Certification Commission as established in 15A NCAC 8A .0202. Copies of this Rule are available from the Division of Environmental Management, Water Quality Section, Archdale Build-

ing, 512 N. Salisbury Street, P. O. Box 29535, Raleigh, North Carolina 27626-0535 at no charge.

(b) In order to insure the proper operation and maintenance of facilities permitted under this Section and classified under the Rules of the Water Pollution Control System Operators Certification Commission (15A NCAC 8), the Operator in Responsible Charge, or a back-up operator when appropriate, must operate and visit the facility as required by the Water Pollution Control System Operators Certification Commission as established in 15A NCAC 8A .0202. Copies of these Rules are available from the Division of Environmental Management, Water Quality Section, Archdale Building, 512 N. Salisbury Street, P. O. Box 29535, Raleigh, North Carolina 27626-0535 at no charge.

Statutory Authority G.S. 143-215.3.

.0921 REVISION TO REFLECT POTW REMOVAL OF POLLUTANT

The regulations regarding removal credits promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.7 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, Pretreatment Offices, Archdale Building, P. O. Box 29535, 512 N. Salisbury St., Raleigh, NC 27626-0535. Copies may be obtained from the US Government Printing Office Bookstore, P. O. Box 56445, Atlanta, Georgia 30343, phone number (404) 331-6947 at a cost of twenty-six dollars (\$26.00).

Statutory Authority G.S. 143-215.1(a), (b); 143-215.3(a)(14); 150B-21.6.

TITLE 19A - DEPARTMENT OF
TRANSPORTATION

CHAPTER 3 - DIVISION OF MOTOR
VEHICLES

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Division of Motor Vehicles intends to adopt rules that implement Part 2 of Article 3A of Chapter 20 of North Carolina General Statutes. Specifically, the rules will establish standards for the motor vehicle safety and emissions inspection program. The agency will subsequently publish in the Register the text of the rules it proposes to adopt as a result of the public hearing and of any comments received on the subject matter.

The proposed effective date of this action is October 1, 1994.

The public hearing will be conducted at 10:00 a.m. on June 1, 1994 at the Division of Motor Vehicles Conference Room, Room 201 - DMV Annex, 1100 New Bern Avenue, Raleigh, NC 27697.

Reason for Proposed Action: To revise rules concerning the vehicle safety and emissions inspection program.

Comment Procedures: Any person desiring to make oral comments should contact Alvin M. Fountain. Written comments should be submitted to Alvin M. Fountain, Division of Motor Vehicles, 1100 New Bern Avenue, Raleigh, NC 27697, telephone (919) 733-3046. Written comments will be accepted until June 2, 1994.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Division of Motor Vehicles intends to amend rules cited as 19A NCAC 3B .0703 - .0704.

The proposed effective date of this action is August 1, 1994.

Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): The agency will schedule a public hearing on the proposed rules if it receives a written request for a hearing within 15 days from the date the proposed text is published. The request for hearing should be mailed to: Emily Lee, P.O. Box 25201, Raleigh, N.C. 27611.

Reason for Proposed Action:

19A NCAC 3B .0703 - To reduce the required length of time that a company or educational institution must be in business prior to certification as a Third Party Tester from two years to six months. Also, to provide that Third Party Testers must administer at least five skills tests annually to maintain certification.

19A NCAC 3B .0704 - To require all Third Party Examiners to successfully complete the CDL Examiner Training Course conducted by the Division of Motor Vehicles prior to certification. Persons who are certified prior to the effective date of this amendment must complete the course by January 1, 1995 to maintain certification as Third Party Testers.

Comment Procedures: Oral or written comments will be accepted until 30 days after the text of the proposed rules are published or until a public hearing is held, whichever is longer. Written comments should be mailed to LaVerne Hill, Driver License Section, Division of Motor Vehicles, 1100 New Bern Ave., Raleigh, N.C. 27697. Oral comments should be directed to LaVerne Hill at (919) 733-9308.

CHAPTER 3 - DIVISION OF MOTOR
VEHICLES

SUBCHAPTER 3B - DRIVER LICENSE
SECTION

SECTION .0700 - COMMERCIAL
DRIVERS' LICENSE

**.0703 REQUIREMENTS FOR THIRD
PARTY TESTERS**

(a) To be certified as a Third Party Tester a person must:

- (1) Make application to and enter into an agreement with the Division as provided in Rule .0706 of this Section.

- (2) Maintain a place of business with at least one permanent regularly occupied structure within the state of North Carolina.
- (3) Ensure its place of business is safe and meets all requirements of state law and local ordinances.
- (4) Have at least one qualified and approved Third Party Examiner in its employ.
- (5) Allow, FHWA, its representative(s), and the Division to conduct random examinations, inspections and audits without prior notice.
- (6) Allow the Division to conduct periodic, but at least annual on-site inspections.
- (7) Maintain at each third party testing location, for a minimum of two years, a record of each driver for whom the Third Party Tester conducts a skills test, whether or not the driver passes or fails the test. Each such record shall include:
 - (A) The complete name and address of the driver;
 - (B) The driver's social security number, driver's license number and the name of the state or jurisdiction that issued the license held by the driver at the time of the test;
 - (C) The date the driver took the skills test;
 - (D) The test score sheet(s) showing the results of the test;
 - (E) The name and identification number of the Third Party Examiner conducting the skills test;
 - (F) The record of all receipts and disbursements;
 - (G) The make, model and registration number of the commercial motor vehicle(s) used to conduct the testing; and
 - (H) The written contract (copy), if applicable, with any person or group of persons being tested.
- (8) Maintain at each approved testing location, a record of each Third Party Examiner in the employ of the Third Party Tester at that location. Each record shall include:
 - (A) A valid Examiner Certificate indicating the Examiner at that location;
 - (B) A copy of the Third Party Examiner's current driving record, which must be updated annually; and
 - (C) Evidence that the Third Party Examiner is a payroll employee of the Third Party Tester.
- (9) Retain all Third Party Examiner records for at least two years after the Third Party Examiner leaves the employ of the Third Party Tester.
- (10) Ensure that the skills tests are conducted in accordance with the requirements of this Section and the instructions provided by the Division.
- (11) Provide documented proof (using a form provided by the Division) to each driver applicant who takes and passes the required skills tests. The driver applicant in turn will present the form to the Division as evidence that they successfully passed the driving tests administered by the Third Party.
- (12) To maintain certification the Third Party Tester must administer skills test to a minimum of five different driver applicants annually in accordance with the requirements of this Section and the instructions provided by the Division.
 - (b) In addition to the requirements listed in Paragraph (a) of this Rule, all Third Party Testers who are not governmental entities or associations must:
 - (1) Truck and Bus Companies:
 - (A) Employ at least 25 North Carolina licensed drivers (full-time, part-time, or seasonal) of commercial motor vehicles.
 - (B) Employ an individual who would be responsible for the organization's third party testing operation.
 - (C) Have been in operation in North Carolina a minimum of ~~two years~~ six months. (If in operation less than ~~two years~~ six months under current company name, identify previous company name(s) to cover the ~~two year~~ six months period.)
 - (2) Educational Institutions:
 - (A) Have an established commercial motor vehicle training program.

- (B) Have been in operation in North Carolina a minimum of ~~two years~~ six months.

Statutory Authority G.S. 20-37.13; 20-37.22.

.0704 REQUIREMENTS FOR THIRD PARTY EXAMINERS

(a) Third Party Examiners may conduct skills tests on behalf of only one Third Party Tester at any given time. If a Third Party Examiner leaves the employ of a Third Party Tester he/she must reapply in order to conduct tests on behalf of a new Third Party Tester.

(b) To qualify as a Third Party Examiner, an individual must:

- (1) Make application on a form provided by the Division;
- (2) Be a payroll employee of the Third Party Tester;
- (3) Possess a valid North Carolina Driver's License with classification and endorsements required for operation of the class and type of commercial motor vehicle used in the skills tests conducted by the Examiner; and
- (4) Have successfully completed a Division-sanctioned the CDL Examiner Training Course conducted by the Division. Persons who were certified as Third Party Examiners prior to August 1, 1994 who did not successfully complete the CDL Examiner Training Course conducted by the Division must successfully complete that course prior to January 1, 1995 to maintain certification as Third Party Examiners. At a minimum upon completion of the training the Third Party Examiner shall have acquired and demonstrated the following knowledge and skills:
 - (A) A comprehensive understanding of North Carolina G.S., Chapter 20 Article 2C and the rules adopted pursuant thereto;
 - (B) A working knowledge of the CDL testing procedures and forms;
 - (C) Ability to administer and score correctly each of the CDL skills test; and
 - (D) Knowledge of testing site and route requirements.

- (5) Take part in all Division required advanced training courses, workshops and seminars;
- (6) Within ten years prior to application have had no convictions for Driving While Impaired (DWI);
- (7) Within five years prior to application have had no driver's license suspensions, revocations, cancellations or disqualifications;
- (8) Be at least 21 years of age ~~and possess a high school diploma or equivalent;~~
- (9) Conduct skills tests on behalf of the Third Party Tester, in accordance with these Rules and in accordance with current instructions provided by the Division.

Statutory Authority G.S. 20-37.13; 20-37.22.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Division of Motor Vehicles intends to amend rules cited as 19A NCAC 3J .0401, .0501.

The proposed effective date of this action is August 1, 1994.

Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): The agency will schedule a public hearing on the proposed rules if it receives a written request for a hearing within 15 days from the date the proposed text is published. The request for a hearing should be mailed to: Mark Fountain, School Bus & Traffic Safety, 1100 New Bern Ave., Raleigh, N.C. 27697.

Reason for Proposed Action:

19A NCAC 3J .0401 - To allow Commercial Truck Driver Training Schools, that are also certified as "Third Party Examiners" by the Division of Motor Vehicles to use the schools equipment to conduct third party testing, for commercial drivers license.

19A NCAC 3J .0501 - To expand eligibility for Commercial Truck Driver Training Instructors License to include persons who do not have a high school diploma, but who have the requisite

training and experience as determined by the Division of Motor Vehicles.

Comment Procedures: Oral or written comments will be accepted until 30 days after the text of the proposed rules are published or until a public hearing is held, whichever is longer. Written comments should be mailed to: Mark Fountain, School Bus & Traffic Safety, 1100 New Bern Ave., Raleigh, N.C. 27697. Oral comments should be directed to Mark Fountain at (919) 733-3046.

CHAPTER 3 - DIVISION OF MOTOR VEHICLES

SUBCHAPTER 3J - RULES AND REGULATIONS GOVERNING THE LICENSING OF COMMERCIAL TRUCK DRIVER TRAINING SCHOOLS AND INSTRUCTORS

SECTION .0400 - MOTOR VEHICLES USED IN INSTRUCTION

.0401 VEHICLE EQUIPMENT

(a) Behind-the-wheel instruction of students in commercial truck driver training schools shall be conducted in motor vehicles owned or leased by the school. All vehicles used for the purpose of demonstration and practice shall:

- (1) If used for field instruction be equipped with:
 - (A) seatbelts as required by Federal and State law;
 - (B) an outside rearview mirror mounted on the right side of the vehicle;
 - (C) a heater, defroster, turn signals and brakelights; and
 - (D) all other equipment required by Chapter 20 of the North Carolina General Statutes except that a working speedometer is not required, and the tire tread depth requirement may be met by using recapped tires so long as no cord or fabric is showing.
- (2) Bear conspicuously displayed signs with the words "Student Driver" in letters not less than six inches in height on both the front and rear of the vehicle and also bear conspicuously displayed signs with the name and location of the school in letters not less than one and one-half inches in

height on both sides of the power unit and on the back of the trailer.

(b) No school equipment shall be used to transport property or persons for compensation, other than a properly enrolled student, except when school equipment is used by certified third party examiners in accordance with the requirements of Title 19A, Subchapter 3B, Section .0700 of these Rules, while conducting third party testing, and the school may charge a reasonable fee for the use of the school's equipment.

Statutory Authority G.S. 20-320 through 20-328.

SECTION .0500 - REQUIREMENTS AND APPLICATIONS FOR DRIVER TRAINING INSTRUCTOR

.0501 REQUIREMENTS

(a) A Class I instructor is one entitled to conduct truck driver training in the classroom, on the field and on the road. Each Class I instructor shall:

- (1) Be of good moral character.
- (2) Be at least 21 years of age, have at least two years experience operating a Class A vehicle and hold a valid Class A license; provided, on and after April 1, 1992 each instructor must hold a valid Class A commercial license from his state of residence.
- (3) Not have been convicted of a felony or convicted of a misdemeanor involving moral turpitude in the ten years immediately preceding the date of application.
- (4) Not have had a revocation or suspension of his driver's license in the two years immediately preceding the date of application.
- (5) Have graduated from high school or hold a high school equivalency certificate or relevant education, training and experience as determined by the Division.
- (6) Not have had convictions for moving violations totaling seven or more points in the year preceding the date of application.
- (7) Have evidence of United States Department of Transportation certification and qualify by experience or training, or both, to instruct students

in the safe operation of truck-tractor-trailer combination units.

(b) A Class II instructor is one entitled to conduct truck driver training in the classroom and on the field only. Each Class II instructor shall:

- (1) Be of good moral character.
- (2) Not have been convicted of a felony or convicted of a misdemeanor involving moral turpitude in the ten years immediately preceding the date of application.
- (3) Not have had a revocation or suspension of his driver's license in the two years immediately preceding the date of application.
- (4) Have graduated from high school or hold a high school equivalency certificate or relevant education, training and experience as determined by the Division.
- (5) Qualify by experience or training, or both, to instruct students in the safe operation of truck-tractor-trailer combination units.

(c) A Class I or II instructor-trainee is one entitled to assist a licensed Class I or II instructor while his instructor's license application is pending at the Division. The Division must be notified in writing within five days of the date the trainee is hired. An instructor-trainee of either class:

- (1) may work in that capacity for only 30 days from the date he is hired;
- (2) may instruct in the classroom and on the field only with a licensed instructor present at all times;
- (3) may not instruct or accompany students on the road until licensed; and
- (4) must wear an identification badge which clearly identifies the individual as an instructor-trainee.

Statutory Authority G.S. 20-320 through 20-328.

TITLE 21 - OCCUPATIONAL LICENSING BOARD

CHAPTER 14 - BOARD OF COSMETIC ART EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. State Board of Cosmetic

Art Examiners intends to adopt rule cited as 21 NCAC 14F .0014.

The proposed effective date of this action is August 1, 1994.

Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): Anyone wishing to demand a public hearing may contact Vicky Goudie, Executive Secretary, N.C. State Board of Cosmetic Art Examiners, 1110 Navaho Dr., Raleigh, N.C. 27609, (919) 850-2793. This demand must be in writing and received by May 31, 1994.

Reason for Proposed Action: To clarify G.S. 88-21(8)(9)(10); G.S. 88-25.

Comment Procedures: Written comments regarding this Rule should be mailed or delivered to Vicky Goudie, Executive Secretary, 1110 Navaho Dr., Raleigh, N.C. 27609, and received by June 15, 1994.

SUBCHAPTER 14F - RULES AND REGULATIONS GOVERNING THE LICENSING OF BEAUTY SALONS

.0014 SALON RENEWAL

(a) From January 1st to February 1st, the fee to renew the salon license will be three dollars (\$3.00) per active chair.

(b) From February 2nd to March 1st, the fee to renew the salon license will be three dollars (\$3.00) per active chair plus a ten dollar (\$10.00) penalty fee.

(c) On and after March 2nd, the fee to renew the salon license will be three dollars (\$3.00) per active chair plus a ten dollar (\$10.00) penalty fee and a twenty-five dollar (\$25.00) reissuance fee of an expired license.

(d) If a salon license is expired more than one renewal period, the fee to renew the salon license will include one reissuance fee and all penalty fees for the years of operation without a valid license.

Statutory Authority G.S. 88-21(8),(9),(10); 88-25.

LIST OF RULES CODIFIED

The List of Rules Codified is a listing of rules that were filed with OAH in the month indicated.

Key:

<i>Citation</i>	=	<i>Title, Chapter, Subchapter and Rule(s)</i>
<i>AD</i>	=	<i>Adopt</i>
<i>AM</i>	=	<i>Amend</i>
<i>RP</i>	=	<i>Repeal</i>
<i>With Chgs</i>	=	<i>Final text differs from proposed text</i>
<i>Corr</i>	=	<i>Typographical errors or changes that requires no rulemaking</i>
<i>Eff. Date</i>	=	<i>Date rule becomes effective</i>
<i>Temp. Expires</i>	=	<i>Rule was filed as a temporary rule and expires on this date or 180 days</i>

NORTH CAROLINA ADMINISTRATIVE CODE

APRIL 94

TITLE	DEPARTMENT	TITLE	DEPARTMENT
4	Commerce	21	Occupational Licensing Boards
10	Human Resources	8 -	Certified Public Accountant Examiners
11	Insurance	16 -	Dental Examiners
13	Labor	21 -	Geologists Examiners
15A	Environment, Health, and Natural Resources	56 -	Registration of Professional Engineers and Land Surveyors
17	Revenue	23	Community Colleges
19A	Transportation	24	Independent Agencies
		5 -	State Health Plan Purchasing Alliance Board

	Citation	AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
4	NCAC 1 - 2 SOC					✓		
	2 TOC					✓		
	2M .0000					✓		
	2N .0000					✓		
	2O .0000					✓		
	2P .0000					✓		
	2Q .0000					✓		
10	NCAC 1N .0001 - .0008	✓					05/01/94	
	3B .0901 - .0903	✓					07/01/94	
	3L .1003		✓		✓		06/01/94	
	19-30 SOC					✓		

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
10	NCAC	26I	.0100					✓		
		35A	.0003					✓		
		41F	.0704		✓		✓		05/01/94	
		49B	.0306		✓		✓		05/01/94	
11	NCAC	10	.0308			✓			05/01/94	
			.1201 - .1202		✓		✓		05/01/94	
			.1206		✓		✓		05/01/94	
			.1303	✓			✓		05/01/94	
			.1403	✓			✓		05/01/94	
		11A	.0601 - .0609			✓			05/01/94	
13	NCAC	7A	.0707 - .0711		✓		✓		05/01/94	
		7F	.0101		✓		✓		05/01/94	
			.0201		✓				04/15/94	
			.0401		✓		✓		05/01/94	
			.0501		✓				04/15/94	
15A	NCAC	10B	.0115		✓				07/01/94	
			.0202 - .0203		✓		✓		07/01/94	
			.0209		✓		✓		07/01/94	
			.0212		✓		✓		07/01/94	
		10C	.0205		✓		✓		07/01/94	
			.0305		✓		✓		07/01/94	
			.0401		✓				07/01/94	
			.0404		✓		✓		07/01/94	
			.0407		✓				06/01/94	
		10D	.0003		✓		✓		07/01/94	
		10F	.0310		✓				05/01/94	
			.0330		✓				06/01/94	
			.0336		✓				06/01/94	
			.0366	✓					06/01/94	
		11	.1423	✓			✓		07/01/94	
		13B	.1628					✓		
		18D	.0206		✓				05/01/94	
17	NCAC	3B	.0114	✓					05/01/94	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
17	NCAC	6B	.0107		✓				05/01/94	
			.0115		✓				05/01/94	
			.0117		✓				05/01/94	
			.0118	✓					05/01/94	
			.0612		✓				05/01/94	
			.3406		✓				05/01/94	
			.3503		✓				05/01/94	
			.3513		✓				05/01/94	
		7B	.4408		✓				05/01/94	
19A	NCAC	3D	.0516	✓					04/15/94	180 DAYS
19A	NCAC	5B	.0102						05/01/94	
transferred and recodified to										
19A	NCAC	5B	.0209							
21	NCAC	8H	.0002					✓		
		8M	.0102					✓		
			.0201					✓		
		8N	.0103					✓		
			.0405					✓		
		16I	.0002 - .0005	✓			✓		05/01/94	
21	NCAC	16I	.0002 - .0005						05/01/94	
transferred and recodified existing to										
21	NCAC	16I	.0006 - .0009							
		16R	.0001 - .0005	✓			✓		05/01/94	
21			.0107		✓				05/01/94	
56			.0403		✓				05/01/94	
			.0502		✓		✓		05/01/94	
			.0505		✓				05/01/94	
			.0602		✓		✓		05/01/94	
			.0606		✓		✓		05/01/94	
			.0802		✓				05/01/94	
			.0804		✓				05/01/94	
			.0901 - .0902		✓				05/01/94	
			.1103		✓				05/01/94	
			.1105		✓				05/01/94	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
.1302					✓		✓		05/01/94	
23	NCAC	2D	.0202- .0203		✓		✓		06/01/94	
.0325 - .0326					✓		✓		06/01/94	
2E .0402					✓		✓		06/01/94	
24	NCAC	5	.0101 - .0102	✓					04/22/94	180 DAYS
.0200(reserved)										
.0301 - .0303				✓					04/22/94	180 DAYS

The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to RRC as provided in G.S. 143B-30.2(d).

HUMAN RESOURCES

Children's Services

<i>10 NCAC 41F .0704 - Physical Facility</i>	<i>RRC Objection 04/21/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 04/21/94</i>

Facility Services

<i>10 NCAC 3L .0906 - Compliance with Laws</i>	
<i>Rule Withdrawn by Agency</i>	<i>04/21/94</i>

Medical Assistance

<i>10 NCAC 26I .0304 - Hearing Procedures</i>	<i>RRC Objection 03/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 03/17/94</i>

INSURANCE

Financial Evaluation Division

<i>11 NCAC 11C .0308 - Foreign HMO: Successful Operation</i>	<i>RRC Objection 03/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 03/17/94</i>
<i>11 NCAC 11F .0207 - Specific Standards for Morbidity, Interest and Mortality</i>	<i>RRC Objection 03/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 03/17/94</i>
<i>11 NCAC 11F .0208 - Reserves for Waiver of Premium</i>	<i>RRC Objection 03/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 03/17/94</i>

LABOR

OSHA

<i>13 NCAC 7A .0707 - Variances and Other Relief Under Section 95-132(a)</i>	<i>RRC Objection 04/21/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 04/21/94</i>
<i>13 NCAC 7A .0708 - Variances and Other Relief Under Section 95-132(b)</i>	<i>RRC Objection 04/21/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 04/21/94</i>
<i>13 NCAC 7A .0709 - Modification: Revocation: and Renewal of Rules or Orders</i>	<i>RRC Objection 04/21/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 04/21/94</i>
<i>13 NCAC 7A .0710 - Action on Applications</i>	<i>RRC Objection 04/21/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 04/21/94</i>
<i>13 NCAC 7A .0711 - Request for Hearings on Applications</i>	<i>RRC Objection 04/21/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 04/21/94</i>

LICENSING BOARDS AND COMMISSIONS

Certified Public Accountant Examiners

<i>21 NCAC 8A .0105 - Purposes and Responsibilities</i>	<i>RRC Objection 03/17/94</i>
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<i>Agency Repealed Rule</i>	<i>Obj. Removed</i>	<i>03/17/94</i>
21 NCAC 8F .0103 - <i>Filing of Examination Applications and Fees</i>	<i>RRC Objection</i>	<i>03/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/17/94</i>
21 NCAC 8F .0112 - <i>Candidate's Request to Sit in Another Jurisdiction</i>	<i>RRC Objection</i>	<i>03/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/17/94</i>
21 NCAC 8G .0409 - <i>Computation of CPE Credits</i>	<i>RRC Objection</i>	<i>03/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/17/94</i>
21 NCAC 8J .0008 - <i>Firm Registration</i>	<i>RRC Objection</i>	<i>03/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/17/94</i>
21 NCAC 8N .0103 - <i>CPAs Outside North Carolina</i>		
<i>Agency Withdrew Rule</i>		<i>03/17/94</i>

Dental Examiners

21 NCAC 16I .0003 - <i>License Void Upon Failure to Renew</i>	<i>RRC Objection</i>	<i>04/21/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/21/94</i>
21 NCAC 16R .0002 - <i>Approved Courses and Sponsors</i>	<i>RRC Objection</i>	<i>04/21/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/21/94</i>

Medical Examiners

21 NCAC 32B .0402 - <i>Fee</i>	<i>RRC Objection</i>	<i>03/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/17/94</i>
21 NCAC 32B .0706 - <i>Fee</i>	<i>RRC Objection</i>	<i>03/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/17/94</i>

Real Estate Appraisal Board

21 NCAC 57A .0210 - <i>Temporary Practice</i>	<i>RRC Objection</i>	<i>03/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/17/94</i>
21 NCAC 57B .0207 - <i>Administration</i>	<i>RRC Objection</i>	<i>03/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/17/94</i>
21 NCAC 57B .0306 - <i>Instructor Requirements</i>	<i>RRC Objection</i>	<i>03/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/17/94</i>
21 NCAC 57B .0603 - <i>Criteria For Course Approval</i>	<i>RRC Objection</i>	<i>03/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/17/94</i>
21 NCAC 57C .0104 - <i>Petition to Reopen Proceeding</i>	<i>RRC Objection</i>	<i>03/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/17/94</i>

PUBLIC EDUCATION

Elementary and Secondary Education

16 NCAC 6C .0307 - <i>Certificate Renewal</i>	<i>RRC Objection</i>	<i>04/21/94</i>
<i>Agency Revised Rule</i>	<i>RRC Objection</i>	<i>04/21/94</i>
16 NCAC 6E .0202 - <i>Interscholastic Athletics</i>	<i>RRC Objection</i>	<i>04/21/94</i>

REVENUE

Individual Income Tax Division

17 NCAC 6B .0612 - <i>Tax Credit for Qualified Business Investments</i>	<i>RRC Objection</i>	<i>03/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/17/94</i>

STATE TREASURER

Collateralization of Deposits

20 NCAC 7 .0202 - Amount of Collateral Required to be Pledged
Agency Revised Rule
20 NCAC 7 .0603 - Acceleration of Maturities
Agency Revised Rule

RRC Objection 03/17/94
Obj. Removed 03/17/94
RRC Objection 03/17/94
Obj. Removed 03/17/94

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
ADMINISTRATION				
<i>North Carolina Council for Women</i>				
Family Violence Prevention Services v. N.C. Council for Women	94 DOA 0242	West	04/13/94	
ALCOHOLIC BEVERAGE CONTROL COMMISSION				
Alcoholic Beverage Control Comm. v. Entertainment Group, Inc.	93 ABC 0719	Gray	03/02/94	
Rayvon Stewart v. Alcoholic Beverage Control Commission	93 ABC 0793	Nesnow	04/11/94	
Alcoholic Beverage Control Comm. v. Peggy Sutton Walters	93 ABC 0906	Mann	03/18/94	
Russell Bernard Speller d/b/a Cat's Disco v. Alcoholic Bev Ctl Comm.	93 ABC 0937	Morrison	03/07/94	
Edward Ogunjobi, Club Piccadilli v. Alcoholic Beverage Control Comm.	93 ABC 1024	West	03/03/94	
Robert Kovalaske, Nick Pikoulas, Joseph Marshburn, Evangelos Pikoulas, d/b/a Our Mom's BBQ v. Alcoholic Beverage Control Commission	93 ABC 1029	Gray	03/04/94	
Christine George Williams v. Alcoholic Beverage Control Comm.	93 ABC 1057	Becton	04/21/94	
Alcoholic Beverage Control Comm. v. Raleigh Limits, Inc.	93 ABC 1485	Mann	03/11/94	
COMMERCE				
<i>Savings Institutions Division</i>				
James E. Byers, et al v. Savings Institutions	93 COM 1622	Chess	03/01/94	
CORRECTION				
<i>Division of Prisons</i>				
Gene Strader v. Department of Correction	94 DOC 0252	Morrison	03/21/94	
CRIME CONTROL AND PUBLIC SAFETY				
<i>Crime Victims Compensation Commission</i>				
James Hugh Baynes v. Crime Victims Compensation Commission	93 CPS 0801	West	03/28/94	9:2 NCR 114
Ross T. Bond v. Victims Compensation Commission	93 CPS 1104	West	04/21/94	
James A. Canady v. Crime Victims Compensation Commission	93 CPS 1108	Gray	03/28/94	
Virginia Roof v. Department of Crime Control & Public Safety	93 CPS 1347	Nesnow	03/24/94	
Percy Clark v. Crime Victims Compensation Commission	94 CPS 0127	Reilly	04/19/94	
Barbara Henderson v. Crime Victims Compensation Commission	94 CPS 0259	Morrison	04/07/94	
Shirley Handsome v. Crime Victims Compensation Commission	94 CPS 0286	Gray	04/28/94	
Georgeann Young v. Crime Victims Compensation Commission	94 CPS 0292	Reilly	04/18/94	
Lawrence L. Tyson v. Crime Victims Compensation Commission	94 CPS 0368	Gray	04/26/94	
Mary E. Haskins v. Crime Victims Compensation Commission	94 CPS 1406	Gray	03/17/94	
ENVIRONMENT, HEALTH, AND NATURAL RESOURCES				
<i>Coastal Management</i>				
Roger Fuller v. EHNHR, Divs. of Coastal Mgmt & Environmental Mgmt	89 EHR 1378 ^a	Gray	04/07/94	
Roger Fuller v. EHNHR, Divs. of Coastal Mgmt & Environmental Mgmt	90 EHR 0017 ^a	Gray	04/07/94	
Gary E. Montalbino v. Division of Coastal Management	93 EHR 1792	Nesnow	03/21/94	

^a Consolidated Cases.

CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<i>Environmental Health</i>				
Jane C. O'Malley, Melvin L. Cartwright v. EHNHR & District Hlth Dept Pasquotank-Perquimans-Camden-Chowan	91 EHR 0838	Becton	04/06/94	
Environment, Health, & Natural Res. v. Clark Harris & Jessie Lee Harris	93 EHR 0924	Becton	03/03/94	
Scotland Water Co., Laurin Lakes v. Environment, Health, & Nat. Res.	94 EHR 0200	Nesnow	04/27/94	
<i>Environmental Management</i>				
Petroleum Installation Equipment Co., Inc. v. Env., Health & Nat. Res.	93 EHR 0531	Chess	03/21/94	
Jack Griffin v. Dept. of Environment, Health, and Natural Resources	93 EHR 1030	Becton	03/21/94	
<i>Marine Fisheries</i>				
Robert I. Swinson, Virginia S. Swinson v. EHNHR, Div/Marine Fisheries	93 EHR 0394	Gray	04/11/94	
<i>Solid Waste Management</i>				
Roger Sessoms v. EHNHR/Asbestos Hazard Management Branch	93 EHR 0951	Gray	03/28/94	
Bertie Citizens Action Coalition, Inc.; Willard J. Oliver, Reginald Early, Herbert Jenkins, Jr., Lindwood Earl Tripp, Willie Warren Tripp, Mary Alice Cherry, and Kathy Burden v. EHNHR, Solid Waste Management Division, and East Carolina Environmental, Inc., Addington Environmental, Inc., et al.	93 EHR 1045	Morrison	04/06/94	9:3 NCR 214
HUMAN RESOURCES				
<i>Division of Child Development</i>				
Judith Fridley v. Div. of Child Development/Abuse/Neglect Unit	93 DHR 0973	Morrison	03/08/94	
DHR, Division of Child Development v. Joyce Gale	93 DHR 1344	Gray	04/28/94	
Gloria C. Haith v. Department of Human Resources	93 DHR 1707	Nesnow	03/22/94	
Gloria C. Haith v. Daycare Consultant	93 DHR 1787	Nesnow	03/14/94	
Charles E. Smith v. Department of Human Resources	93 DHR 1797	Nesnow	03/21/94	
Living Word Day Care, Jonathan Lankford v. Dept. of Human Resources	94 DHR 0168	Nesnow	03/23/94	
<i>Facility Services</i>				
Charles E. Hunter, Jr., M.D. & Coastal Perfusion Svcs, Inc. v. Cert of Need Section, Div of Facility Svcs, DHR, and Wilmington Perfusion Corp. and Howard F. Marks, Jr., M.D.	93 DHR 0746	Morgan	04/11/94	
Presbyterian-Orthopaedic Hospital v. Department of Human Resources	93 DHR 0805	Reilly	03/11/94	
Lowell Stafford v. Department of Human Resources	93 DHR 1381	Gray	04/15/94	
<i>Division of Medical Assistance</i>				
J.R., by and through her agent & Personal Rep., Hank Neal v. DHR	93 DHR 0528	Gray	04/27/94	
David Yott v. Department of Human Resources	93 DHR 1113	Gray	04/05/94	
Division of Medical Assistance v. Catawba Cty Dept. of Social Services	93 DHR 1778	West	03/04/94	
<i>Division of Social Services</i>				
Evelyn Moore v. Department of Human Resources	94 DHR 0293	Reilly	04/15/94	
<i>Child Support Enforcement Section</i>				
William Heckstall v. Department of Human Resources	93 CSE 1077	Reilly	03/14/94	
Bryan Jeffrey Cole v. Department of Human Resources	93 CSE 1091	Becton	03/30/94	
Dexter L. Chambers v. Department of Human Resources	93 CSE 1124	West	03/28/94	
Ronald E. Johnson v. Department of Human Resources	93 CSE 1125	Becton	03/30/94	
Roger Moore v. Department of Human Resources	93 CSE 1127	Becton	04/14/94	
Alvin Lee Martin v. Department of Human Resources	93 CSE 1128	Nesnow	04/04/94	
Robert Young v. Department of Human Resources	93 CSE 1133	Reilly	04/18/94	
Antonio Townsend v. Department of Human Resources	93 CSE 1139	Becton	03/30/94	
Troy E. Pinkney v. Department of Human Resources	93 CSE 1148	Mann	03/29/94	
Anthony A. Macon v. Department of Human Resources	93 CSE 1149	Gray	04/26/94	
Walter Lee Corbett v. Department of Human Resources	93 CSE 1150	Reilly	03/30/94	
Joe Louis Mayo v. Department of Human Resources	93 CSE 1161	West	04/19/94	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
Nash Andrew Newsome v. Department of Human Resources	93 CSE 1170	Mann	03/17/94	
James E. Watson v. Department of Human Resources	93 CSE 1171	Gray	04/26/94	
Robert Lee Barrett v. Department of Human Resources	93 CSE 1172	Morrison	04/20/94	
Betty A. Williams, Fred E. Jones v. Department of Human Resources	93 CSE 1178	Nesnow	04/20/94	
Eric G. Sykes v. Department of Human Resources	93 CSE 1181	Becton	04/20/94	
Bernadette Cook v. Department of Human Resources	93 CSE 1202	Gray	04/27/94	
Dennis W. Nolan v. Department of Human Resources	93 CSE 1254	Morrison	04/27/94	
Robert Calvin Connor v. Department of Human Resources	93 CSE 1258	West	04/19/94	
James D. Williams v. Department of Human Resources	93 CSE 1259	West	04/19/94	
Vaughn D. Pearsall v. Department of Human Resources	93 CSE 1267	Becton	04/20/94	
Sidney Ray Tuggle Jr. v. Department of Human Resources	93 CSE 1307	West	04/25/94	
George Aaron Collins v. Department of Human Resources	93 CSE 1331	West	04/25/94	
Samuel L. Dodd v. Department of Human Resources	93 CSE 1357	Gray	03/31/94	
William A. Sellers v. Department of Human Resources	93 CSE 1359	Morrison	04/20/94	
Kenneth W. Cooper v. Department of Human Resources	93 CSE 1364	West	04/27/94	
Steven A. Elmquist v. Department of Human Resources	93 CSE 1392	Reilly	04/29/94	
Daniel Thomas Hefelev. Department of Human Resources	93 CSE 1432	Morrison	04/28/94	
Alton D. Johnson v. Department of Human Resources	93 CSE 1434	Reilly	04/29/94	
Chester Sanders v. Department of Human Resources	93 CSE 1437	West	04/19/94	
Rodney Guyton v. Department of Human Resources	93 CSE 1439	West	04/21/94	
Timothy D. Evans v. Department of Human Resources	93 CSE 1460	Reilly	04/28/94	
Billy Edward Smith v. Department of Human Resources	93 CSE 1461	West	04/19/94	
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JUSTICE

Alarm Systems Licensing Board

Alarm Systems Licensing Board v. George P. Baker	93 DOJ 0457	Nesnow	03/10/94	
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Private Protective Services Board

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Training and Standards Division

Curtiss Lance Poteat v. Criminal Justice Ed. & Training Stds. Comm.	93 DOJ 0231	Chess	03/28/94	
Willie David Moore v. Criminal Justice Ed. & Training Stds. Comm.	93 DOJ 1071	Nesnow	04/11/94	9:3 NCR 218
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Agricultural and Technical State University

CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
Linda D. Williams v. Agricultural and Technical State University	93 OSP 0089	Chess	03/23/94	
Juanita D. Murphy v. Agricultural and Technical State University	93 OSP 0708	Morrison	03/16/94	
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Sandra J. Cunningham v. Catawba County	93 OSP 1097	Reilly	04/29/94	9:4 NCR 292
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Fred L. Kearney v. Department of Crime Control & Public Safety	91 OSP 0401	West	03/18/94	
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Glenn I. Hodge Jr. v. Samuel Hunt, Sec'y Dept of Transportation	93 OSP 0500 ^{#1}	Morrison	03/10/94	9:1 NCR 60
Betsy Johnston Powell v. Department of Transportation	93 OSP 0550	Morrison	03/28/94	
Clyde Lem Hainton v. Department of Transportation	93 OSP 0944	Chess	02/28/94	
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STATE OF NORTH CAROLINA
COUNTY OF CATAWBA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
93 OSP 1097

<p>SANDRA J. CUNNINGHAM Petitioner,</p> <p style="text-align: center;">v.</p> <p>CATAWBA COUNTY Respondent.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>RECOMMENDED DECISION</p>
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BACKGROUND:

This matter was heard in Newton, Catawba County, North Carolina, on March 23 and 24, 1994, by Administrative Law Judge Robert Roosevelt Reilly, Jr. The Petitioner initiated the case on October 13, 1993, in order to appeal the decision of Respondent Catawba County to terminate her from the position of Social Work Supervisor III, which termination was effective on July 9, 1993. The record closed on March 24, 1994, after the parties completed their presentation of evidence and their final arguments.

ISSUES:

Whether Petitioner was dismissed in contravention to North Carolina General Statute Section 126-30.

STATUTES AND RULES INVOLVED:

N.C.G.S. Sections 126-5, 126-30 and 126-35

SUMMARY OF DECISION:

Petitioner's appeal should be granted because the Respondent County dismissed Petitioner in contravention to North Carolina General Statute Section 126-30.

APPEARANCES FOR PETITIONER:

Samuel H. Long, III, Attorney at Law, Post Office Box 3827, Hickory, North Carolina, 28603.

APPEARANCES FOR RESPONDENT:

Carolyn Crouch, Staff Attorney, Catawba County Department of Social Services, Post Office Box 389, Newton, North Carolina, 28658.

WITNESSES:

The Petitioner presented the following witnesses:
Sandra J. Cunningham

The Respondent presented no witnesses.

EXHIBITS:

1. Sandra Cunningham's Resume and College Transcript.
2. Copy of public advertisement for the position for which Petitioner was employed, which advertisement was placed by Respondent Catawba County in the Asheville Citizen Times and appeared on Sunday, November 12, 1989.
3. Petitioner's application for employment to Catawba County.
4. December 22, 1989, letter to Petitioner from Bobby K. Boyd, Catawba County Department of Social Services Director, offering employment to Petitioner.
5. January 5, 1990, job description for Petitioner's job.
6. January 22, 1990, job description for Petitioner's job signed by Andrea Benfield and Bobby Boyd.
7. December, 1978, letter to Petitioner from Academy of Certified Social Workers advising Petitioner of her admission to the Academy of Certified Social Workers.
8. Code of Ethics of National Association of Social Workers which was enclosed with December, 1978, letter, exhibit "7".
9. A second December, 1978, letter to Petitioner from the Academy of Certified Social Workers which was enclosed with the December, 1978, letter, exhibit "7".
10. The envelope in which exhibits "7", "8", and "9" were mailed to Petitioner by the Academy of Certified Social Workers and a copy of a business reply envelope which was also included in that December, 1978, mailing.
11. Petitioner's certificate attesting to her entitlement to use the designation ACSW as of November, 1978, and bearing a 1981/82 ACSW gold-colored sticker.
12. Memorandum of May 4, 1993, from Petitioner to Andrea Benfield.
13. Letter of May 10, 1993, to Bobby Boyd from Angela Phillips.
14. Letter of July 1, 1993, to Petitioner from Andrea Benfield.
15. Letter of July 2, 1993, to Petitioner from Bobby Boyd and Andrea Benfield.
16. Letter of July 9, 1993, to Bobby Boyd and Andrea Benfield from Petitioner's counsel.
17. Letter of July 12, 1993, to Petitioner from Bobby Boyd and Andrea Benfield.

BASED UPON A PREPONDERANCE OF THE EVIDENCE ADMITTED INTO THE RECORD IN THIS CASE, THE ADMINISTRATIVE LAW JUDGE MAKES THE FOLLOWING FINDINGS OF FACT:

1. Catawba County is a political subdivision of the State of North Carolina. The Catawba County Department of Social Services is a part of the Catawba County government. Employees of the Catawba County Department of Social Services are subject to the North Carolina State personnel system, N.C.G.S. Chapter 126, by virtue of the provisions of N.C.G.S. 126-5(a)(2).

2. Catawba County has adopted a personnel ordinance which acknowledges that employees of its Department of Social Services are subject to the provisions of N.C.G.S. Chapter 126. The Catawba County Personnel Ordinance, Chapter 16 of the Catawba County Code, of which the Court takes judicial notice, also provides for an employee grievance procedure and for appeal by an employee to the office of Administrative Hearings.

3. Sandra J. Cunningham, Petitioner, was employed by Catawba County Department of Social Services as of January 15, 1990, as a Social Work Supervisor III. Petitioner is subject to the North Carolina State personnel system, N.C.G.S. Chapter 126.

4. After having received her dismissal letter as set forth hereunder, Petitioner gave appropriate notice to Catawba County of her desire to pursue her remedies through the County grievance procedure. Petitioner did pursue those remedies as prescribed by the Catawba County Code. After Petitioner was denied relief after hearings before Catawba County Department of Social Services Director Bobby K. Boyd and Catawba County Manager J. Thomas Lundy, respectively, Petitioner, in apt time, made proper request to the Office of Administrative Hearings for a contested case hearing.

5. This case was assigned in due course to the undersigned Administrative Law Judge and was noticed for hearing to begin on March 23, 1994, in Newton, Catawba County, North Carolina.

6. The Petitioner was present with her attorney, Samuel H. Long, III, Esq. of Hickory, North Carolina. Respondent, Catawba County, was represented by Staff Attorney Carolyn Crouch. Present with Ms. Crouch on the first day of hearing were County Personnel Director Janith Huffman, Catawba County Department of Social Services Director Bobby K. Boyd, and Catawba County Department of Social Services Program Administrator Andrea T. Benfield. Only Ms. Crouch appeared for Respondent Catawba County on the second day of hearing.

7. On July 2, 1993, Respondent mailed to Petitioner a letter (Exhibit "15") wherein, inter alia, Respondent offered Petitioner a disciplinary demotion in lieu of dismissal. The reason given for the disciplinary demotion or dismissal was that Petitioner had allegedly falsified information on her employment application to Catawba County through misrepresenting her credentials on that application. Specifically the County contended that Petitioner had falsely claimed to be certified by ACSW, the Academy of Certified Social Workers, a national professional organization for social workers.

8. Petitioner responded to Respondent's letter by means of a letter from her attorney which was dated July 9, 1993, (Exhibit "16") and which was hand-delivered to Respondent on that date, wherein, inter alia, Petitioner declined Respondent's offer of a demotion in lieu of termination and advised that she wished to pursue her remedies through the County's grievance procedure.

9. In her letter of July 9, 1993, Petitioner, among other things, requested to be allowed to continue to work for Respondent in the position which she had previously been occupying or to accept reassignment to some other position within the Department of Social Services pending outcome of the grievance procedure and any appeals therefrom.

10. By letter of July 12, 1993, to Petitioner from Respondent's employees Bobby Boyd and Andrea Benfield, Respondent acknowledged receipt of Petitioner's letter of July 9, 1993, confirmed the termination of Petitioner's employment with the Catawba County Department of Social Services effective July 9, 1993, at 5:00 p.m., and denied Petitioner's request to be allowed to continue in her current employment pending a grievance process and any appeals therefrom (Exhibit "17").

11. Petitioner was employed by Respondent on or about January 15, 1990, as a Social Work Supervisor III. She was placed in charge, inter alia, of the adoption and foster care services of the Catawba County Department of Social Services. She remained in that position until she was discharged effective June 9, 1993.

12. The Social Work Supervisor III position for which Petitioner was employed by Respondent Catawba County had as its minimum education and special training requirements, a Bachelor's Degree in Social Work and 4 years direct service experience. A Master's in Social Work was listed as a preferred qualification. Four (4) years of social work experience in a social service agency was required. The only license or certificates which were required were a North Carolina driver's license and a defensive driving course. As to special knowledge, abilities, skills, physical requirements, etc., the job required "extensive knowledge of social work principles and methodologies and a strong background in child welfare areas of foster care and adoption." (See Petitioner's Exhibits "5" and "6")

13. Petitioner graduated from the University of North Carolina at Chapel Hill in 1972 with a Bachelor's Degree in Sociology. She graduated from the University of North Carolina at Chapel Hill's School of Social Work in December of 1973 with a Master's Degree in Social Work (MSW). At the time of her employment by Catawba County, she was enrolled in a Master's of Business Administration Degree program at the University of North Carolina at Charlotte.

14. Petitioner began her professional work career in Winston-Salem, North Carolina, where she was a case worker for the North Carolina Division of Services for the Blind from April of 1974 to June of 1975. From December of 1975 to January of 1977, Petitioner was employed by the National Opinion Research Center as a Study Coordinator locating participants and doing structured interviews in regard to a federally funded health insurance study. At that time Petitioner lived and worked in the Charleston, South Carolina, area. From April of 1977 until July of 1979, Petitioner was a Cottage Director/Social Worker, and subsequently the Director of Treatment Services for the Oak Grove Residential Treatment Center in North Charleston, South Carolina. From August of 1979 to October of 1986, Petitioner was employed by the Berkeley County Youth Development Center in Mocks Corner, South Carolina, as Program Director. From 1976 through October of 1986, Petitioner lived in Summerville, South Carolina.

15. In December of 1986 until January of 1990, when Petitioner went to work for Catawba County, Petitioner was employed by Lutheran Family Services with offices in Dallas, North Carolina, as Area Director. In that connection she had overall administrative supervision responsibility for that program and its various social welfare programs and activities.

16. With the possible exception of the period when Petitioner was employed as a Research Study Coordinator for approximately 14 months, all of Petitioner's professional work activities have been with social service agencies either in direct service delivery or in administration.

17. Petitioner had at least 15 years of experience in social work direct service and administration as well as a Bachelor's and Master's Degree when she applied to Catawba County for employment.

18. The Respondent County does not claim that Petitioner is or was in any way deficient with respect to her educational or experience qualifications for the job which she was employed and the undersigned finds that she was well qualified by education and experience for the position for which she was employed.

19. On Petitioner's Resume which was submitted to Catawba County when Petitioner applied for employment, Petitioner lists the Academy of Certified Social Workers, the National Association of Social Workers, the University of North Carolina School of Social Work Alumni Association, and the National Foster Parents Association among her professional memberships. (See Exhibit "1")

20. On Petitioner's Application for Employment to Catawba County, dated November 18, 1989 (Exhibit "3"), there is a line on the first page of that application after the space for the listing of an applicant's educational background, where the applicant is asked to "list fields of work for which you are licensed registered, or certified, giving date(s) and source(s) of issuance". Petitioner listed "Social Work-ACSW". No other information or dates were listed.

21. After Petitioner submitted an application to Catawba County for the Social Work Supervisor III position, Petitioner was called for an interview and did interview with Andrea Benfield, an administrator with the Catawba County Department of Social Services who ultimately became Petitioner's immediate supervisor. At no time during either that interview by Ms. Benfield with Petitioner nor at any other time during the hiring process did Ms. Benfield or anyone else on behalf of Catawba County make any inquiry of Petitioner regarding her ACSW certification or the "Social Work-ACSW" listing on her job application.

22. Throughout Petitioner's employment by Catawba County Department of Social Services her ACSW membership certificates, Exhibit "11", which showed a November, 1978, membership entry date and a 1981/2 ACSW gold-colored sticker in the place usually used for annual membership stickers, was displayed in a frame in Petitioner's office. Both Andrea Benfield and Bobby Boyd were in Petitioner's office on multiple occasions during the course of Petitioner's employment by Catawba County Department of Social Services. The matter of Petitioner's ACSW certification or membership status was never mentioned to Petitioner by Ms. Benfield, Mr. Boyd, nor anyone else with Catawba County until the events described herein immediately prior to Petitioner's dismissal.

23. Subsequent to her interview with Andrea Benfield, Petitioner received a telephone call from Ms. Benfield offering her employment as a Social Work Supervisor III with Catawba County. Petitioner initially declined to accept employment because of inadequacy of the salary. Petitioner subsequently received another telephone call from Ms. Benfield orally offering her the position at a higher salary. Petitioner orally accepted the position at the higher salary.

24. Petitioner subsequently received a letter dated December 22, 1989, from Catawba County Department of Social Services Director Bobby K. Boyd (Exhibit "4") confirming her appointment as a Social Work Supervisor III. That letter states "You were selected because of our belief that you possess both a clinical and administrative perspective". The letter does not mention her being ACSW certified.

25. Pursuant to normal Catawba County procedure, Petitioner was initially employed as a probationary employee. Later in 1990 Petitioner received permanent employee status with the Catawba County Department of Social Services.

26. Throughout her tenure with Respondent Catawba County, Petitioner, in accordance with the regular personnel policies of Catawba County, was evaluated on a regular basis. Her evaluations were extensive and written and were conducted primarily by Andrea Benfield, Petitioner's immediate supervisor, and reviewed and approved by Bobby K. Boyd, Director of the Catawba County Department of Social Services.

27. Based upon her evaluations, Petitioner received annual increments and merit pay on every occasion when she was eligible for same during the course of her employment by Catawba County.

28. In the summer of 1992, Petitioner inquired of her supervisor Andrea Benfield and of department director Bobby Boyd regarding the possibility of her assuming custody of a 12-year old child who was then in the custody of the Catawba County Department of Social Services. The child was in the foster care program but the department had been unable to find permanent placement for the child. Department director Boyd reviewed the child's case with Petitioner and with the child's social worker and advised Petitioner that before she undertook to assume personal custody of the child that the department should make additional efforts to find permanent placement or adoption for the child outside of the agency. Petitioner accepted that decision from director Boyd and instructed the child's social worker to make additional efforts to find placement for the minor child. Petitioner was not removed from supervisory responsibility for the social worker handling the child's case. Multiple additional efforts were made over the next several months to find placement for the child either with adoptive parents, in a permanent foster care placement, or in a suitable group home. All of those efforts were unsuccessful. By the spring of 1993, the child was still in the Catawba County Receiving Home, a temporary care facility designed and licensed to keep children for no longer than ninety (90) days.

29. In March or April of 1993, in the normal course of her duties, Petitioner had occasion to discuss the case of this child with Angela Phillips, District Administrator for the Guardian Ad Litem office. During the course of that conversation, Petitioner mentioned that some months earlier she had expressed her interest in personally providing a permanent home for this child. Petitioner was encouraged by the GAL administrator to again raise that issue with her supervisors within the Department of Social Services. The GAL administrator also stated her intent to raise with the Department the issue of the need for finding permanent placement for this child.

30. Petitioner wrote a memo to her supervisor, Andrea Benfield, dated May 4, 1993, (Exhibit "12") again expressing her interest in seeking custody of the minor child.

31. On May 10, 1993, Ms. Phillips, the GAL program District Administrator, wrote to Catawba County Department of Social Services Director Boyd (Exhibit "13") expressing concern over the lack of permanent placement for the child who was by then thirteen (13) years of age, noting Petitioner's interest in assuming the custody and care of the child, and advising that the GAL office was "motioning the case into Court to explore this with the Judge".

32. On May 17, 1993, Petitioner's supervisor, Andrea Benfield, met with Petitioner in Petitioner's office for a regular conference. At the end of that conference, Petitioner inquired of Ms. Benfield regarding the matter of her memo about the minor child because Petitioner had received no response to that memo. Ms. Benfield advised Petitioner that she (Ms. Benfield) and department director Bobby Boyd would make a decision about that matter when Mr. Boyd returned from vacation on May 24. Petitioner advised Ms. Benfield that she was inquiring about the matter because she knew that a hearing on the case was scheduled in the relatively near future and Petitioner needed to know whether or not she needed to employ an attorney. At that point, Ms. Benfield became very angry with Petitioner. Ms. Benfield inquired of Petitioner if Petitioner thought that she could take on the entire agency and told Petitioner that Petitioner had better decide whether or not Petitioner wanted to work for the agency.

33. On May 24, 1993, Petitioner again met with her supervisor, Andrea T. Benfield, who brought up the matter of Petitioner's interest in providing a home for the subject minor child. Ms. Benfield called Petitioner unethical and unprofessional. Ms. Benfield told Petitioner that she intended to have Petitioner's ethics reviewed. Petitioner disagreed that she had acted unethically but agreed to a review of her ethics in the matter.

34. On May 25, 1993, Petitioner had occasion to meet with Catawba County Staff Attorney Carolyn Crouch who raised with Petitioner the matter of the GAL motion regarding the child's placement. Ms. Crouch advised Petitioner that while Petitioner's request was legal Ms. Benfield was concerned about the ethical propriety of Petitioner's interest in providing a home for the child. Ms. Crouch advised Petitioner to call around the state to see if there were any precedent for such a request. Ms. Crouch told Petitioner that Petitioner was the gutsiest woman she knew for taking on the Department over this issue.

35. Petitioner talked with an attorney on the Attorney General's staff who advises departments of social services across the state. Petitioner was advised that there was nothing illegal or unethical about Petitioner's request. Petitioner informed Ms. Crouch and Ms. Phillips, the GAL director, of what she had learned.

36. On June 1, 1993, a Juvenile Court hearing on the issue of placement for the minor child was continued at the request of the Respondent Department of Social Services.

37. On June 10, 1993, Andrea Benfield met with Petitioner and told Petitioner that because Ms. Benfield believed Petitioner had acted unethically Ms. Benfield had sought an ethical review by NASW, the National Association of Social Workers, but when she checked with NASW she had learned that Petitioner's membership had lapsed. Ms. Benfield then told Petitioner that Petitioner had been using the ACSW credentials dishonestly in that Ms. Benfield told Petitioner that it was dishonest to use the ACSW credentials and not pay the dues and have current membership.

38. Petitioner told Ms. Benfield then, and has since maintained, that Petitioner had taken the ACSW test and done all the necessary clinical work and had otherwise qualified for ACSW certification in 1978 and that she had since paid dues, at least sporadically, for a number of years. Petitioner asserted that she knew of no dues-paying requirement in order to maintain ACSW certification, and that she had really not given any thought to the matter.

39. Ms. Benfield again accused Petitioner of dishonesty and instructed Petitioner not to use the ACSW credentials as long as she still worked at the agency. Ms. Benfield said she would check with the county personnel office and see what they had to say about the matter.

40. On June 11, 1993, Petitioner called NASW and requested a membership reinstatement application.

41. On June 14, 1993, Petitioner filled out a NASW membership reinstatement application and mailed it with a \$165.00 check to the NASW office in Washington, D.C., in order to be reinstated as a member. Petitioner sent a copy of same to Andrea Benfield.

42. On June 14, 1993, Andrea Benfield met with Petitioner and asked Petitioner to consider moving to a job as supervisor of group homes for Respondent Department of Social Services. Andrea Benfield advised Petitioner that she could move to that position at no decrease in pay. Petitioner advised Andrea Benfield that she did not want to move to that position. Andrea Benfield asked her to think about it because of the Department's need for a person in that position with her ability and experience. Andrea Benfield did not mention the ACSW membership matter.

43. In November of 1992, Respondent Department of Social Services had received approval from the County to divide Petitioner's Social Work Supervisor III job in charge of both foster care services and adoption services into two positions, both at the Supervisor III level. Since November of 1992, the Respondent Department of Social Services had been recruiting unsuccessfully for someone to take one of the two newly created positions. Petitioner was told by Department of Social services director Bobby Boyd that she could have whichever of the two positions she wanted. Petitioner had requested the adoption supervisor's job and was told she could have that position when someone was found to take the foster care job. In the meantime Petitioner had continued to supervise both sections.

44. In reliance upon the promises to her regarding her future employment with Catawba County, Petitioner turned down, in June of 1993, the offer of a job with the State of North Carolina as supervisor of the state's adoption services office.

45. On June 16, 1993, Petitioner again met with Andrea Benfield and reiterated that she wanted the adoption supervisor's job. Andrea Benfield informed Petitioner that someone had been hired to do the foster care supervisor job.

46. On June 23, 1993, Andrea Benfield met with the employees in Petitioner's unit and informed them that a person had been employed to take the foster care supervisor's job.

47. On June 24, 1993, Andrea Benfield met with Petitioner and told Petitioner she had to take the group home supervisor's job. Transfer to that job would have been a demotion for Petitioner. Petitioner expressed her disappointment and unhappiness to Andrea Benfield.

48. On June 30, 1993, Petitioner met again with Andrea Benfield who told Petitioner that she was being demoted to the Group Home Supervisor's position which was a Social Work Supervisor II position and would have to take a decrease in pay as a disciplinary action.

49. On July 1, 1993, at 8:30 am. as Petitioner began to chair a regularly scheduled staff meeting, Andrea Benfield gave Petitioner a letter (Exhibit "14") directing Petitioner to attend a

pre-disciplinary meeting that same day at 1:30 pm. in the County Personnel Office. It was not until the staff meeting ended after 11:00 a.m. that Petitioner had an opportunity to read the subject letter.

50. The letter of July 1, 1993, Exhibit "14", advised Petitioner that the purpose of the 1:30 p.m. meeting was to "review with you the reasons I feel a disciplinary demotion is in order".

51. Petitioner did meet with Andrea Benfield and Catawba County Personnel Director Janith Huffman at 1:30 p.m. on July 1, 1993. Petitioner was again accused by Andrea Benfield of being dishonest and misrepresenting her credentials with respect to her ACSW certification. Petitioner repeated that she considered herself ACSW certified at all times since she first was certified in 1978; that she did not believe her payment or non-payment of dues affected her ACSW certification; that her non-payment of dues in recent years had not been intentional, just a matter of neglect; and that she had not intended to deceive or misrepresent by her use of the ACSW certification on job application or subsequently.

52. By letter to Petitioner dated July 2, 1993, Andrea Benfield and Bobby K. Boyd stated "the offense of falsifying job information through the misrepresentation of your credentials is a dismissable one". In lieu of dismissal they offered Petitioner a demotion to the position of Social Work Supervisor II of Residential Child Care Services at Grade 71 with a salary decrease of 2.5%. Petitioner would have been placed on disciplinary probation for six months. Acceptance of the demotion in lieu of dismissal was stipulated to be non-grievable as it was said to be "offered as a settlement of your claims under the grievance process". Petitioner was advised that if she chose dismissal rather than the demotion she would forfeit her accrued leave in the amount of 217.18 hours. Petitioner was directed to advise the Respondent of her decision by July 12, 1993, or her termination would be deemed effective on July 9, 1993, at 5:00 p.m. (See Exhibit "15")

53. By letter to Andrea Benfield and Bobby Boyd of July 9, 1993, from Petitioner's attorney, Petitioner, *inter alia*, rejected Respondent's demotion option and stated her intention to grieve her dismissal pursuant to provisions of the Catawba County Code. (Exhibit "16")

54. The Academy of Certified Social Workers (ACSW) is a part of NASW, the National Academy of Social Workers. Petitioner became a member of NASW as a graduate student. She was certified by ACSW in 1978 when she was living and working in South Carolina. Her best recollection is that she got an ACSW membership application from a co-worker and that she took the qualifying test, without prior preparation for it, somewhere in the Charleston area.

55. Petitioner received a mailing from ACSW in December of 1978 wherein, *inter alia*, she was advised of her "successful completion of the assessment procedures for admission to the Academy of Certified Social Workers". She was told "You are now authorized to begin using the ACSW designation after your name ...". She was advised "As a member of the Academy of Certified Social Workers, you are expected to maintain the highest possible standards of professional performance, to adhere to the NASW Code of Ethics and to assume greater responsibility for support and advancement of the social work profession". (Petitioner's Exhibit "7").

56. Petitioner's Exhibit "8" is the NASW Code of Ethics enclosed with the letter, Petitioner's Exhibit "7". Petitioner's Exhibits "9" and "10" were the rest of the enclosures with that mailing.

57. Nowhere among the documents mailed to Petitioner with her notification of ACSW certification was there any mention of any requirement that she continue to pay dues to NASW or ACSW as a condition of continuing certification or right to use the ACSW designation.

58. From the time that Petitioner became ACSW certified until she moved to North Carolina she lived at the same Summerville, South Carolina, residence where she received her notice of certification.

59. Petitioner last paid dues to NASW in 1986 for a period ending sometime in 1987.

60. When Petitioner moved from South Carolina to North Carolina in December of 1986, she had four different addresses from December of 1986 until May of 1987. Petitioner does not remember sending notification of her various address changes to NASW.

61. Petitioner testified at the hearing before the undersigned and at the July 1, 1993, pre-disciplinary meeting that she did not remember receiving any dues notices from NASW after she moved to North Carolina. She also testified before the undersigned that it is her practice to pay bills upon receipt of a statement therefor.

62. Petitioner does not claim to have paid dues to NASW or ACSW since sometime in 1986.

THE UNDERSIGNED FURTHER FINDS:

63. Petitioner's dues to the Academy of Certified Social Workers (ACSW) were not currently paid when Petitioner submitted her job application to Catawba County.

64. Catawba County's job application does not require that, nor inquire as to whether, an applicant's dues to professional organizations are currently paid. There is nothing in the job application which makes reference to being a dues-paying member of any organization. The application does not give any date(s) or source(s) of issuance for the "Social Work - ACSW" information supplied in the blank on page 1 of Exhibit "3" and Respondent County made no inquiry about the same when it was considering whether to employ Petitioner.

65. There is nothing in the documents whereby the Academy of Certified Social Workers informed Petitioner of her ACSW certification and of her entitlement to use the ACSW designation that she had to make annual dues payments to the organization in order to continue to use that designation or to claim certification by ACSW.

66. Beyond any doubt Petitioner was certified by ACSW in November of 1978 and was so certified at all times relevant to this case.

67. That Petitioner had not paid annual dues to that organization for some time does not make her claim of ACSW certification false or misleading.

68. Petitioner followed what the undersigned finds is the normal practice of most people who do not pay bills until they are received and Petitioner did not receive bills after she moved to North Carolina. Even if Petitioner did receive dues notices it is not remarkable for persons not to pay dues to professional or business organizations.

69. Petitioner displayed on a wall in her office her ACSW membership certificate with the latest membership sticker being dated 1981/2. Clearly there was no intent on Petitioner's part to deceive anyone as to her membership status with ACSW. No one ever asked Petitioner about that certificate during the time she was employed by Catawba County.

70. N.C.G.S. 126-30 provides the framework for the recommended decision in this case. That statute provides, inter alia, that an employee such as Petitioner may be discharged if she knowingly and willfully disclosed false or misleading information about her job credentials which were significantly related to the job responsibilities of the position for which she was applying.

71. The undersigned does not believe that Petitioner's non-payment of dues to ACSW and some question about whether or not she was technically entitled to use the ACSW designation was the reason why Petitioner was discharged from employment.

72. Petitioner offered evidence that the reason given in the July 2, 1993, letter of dismissal, to wit: the alleged falsification of information on her job application, was not the real reason she was

dismissed but rather the real reason was her expressed interest in assuming custody of a minor child who was in foster care with Catawba County Department of Social Services.

73. The undersigned can understand the Respondent Department's concern over an employee's seeking to assume custody of a child who was in the care of the department. The department's initial approach to the issue was reasonable. Department Director Boyd initially said no to the first inquiry in the summer of 1992 and directed more efforts to find permanent placement for the child. Additional efforts were made for several months but without success. The undersigned cannot understand the department's reaction after the GAL program motioned the child's case back into Court.

74. Clearly the issue of Petitioner's non-payment of dues to ACSW is a pretext for the decision of department executives to discharge Petitioner because of Petitioner's expressed desire to assume custody of a child whom the department had been unable to place in a permanent foster care or group home situation.

75. Respondent has the burden of proof to show by competent evidence that Petitioner did knowingly and willfully submit to Respondent false or misleading information about her job credentials which credentials were significantly related to the responsibilities of the position for which Petitioner was applying. Respondent chose to present no evidence in support of its position and has failed to meet its burden with respect to any of the statutory elements necessary to justify Petitioner's dismissal.

76. The undersigned notes that among the first and last things which the undersigned did during the course of this hearing was to attempt to encourage a settlement of this case between the parties. From the position taken by Respondent at this hearing it is evident that no settlement is possible.

77. The undersigned finds that Petitioner has lost wages and benefits as a result of her dismissal by Respondent. In particular the undersigned finds that when discharged Petitioner was earning a salary of \$18.9335 gross per hour in Grade 73, Step 10 of the Catawba County Salary Schedule as it existed at that time. In addition, Petitioner received various employee benefits under Catawba County's employee benefit cafeteria plan.

78. The undersigned specifically notes that according to Exhibit "15", Respondent's letter to Petitioner dated July 2, 1993, with her dismissal Respondent also took away from Petitioner already-earned leave in the amount of 217.18 hours. It is clear to the undersigned that since Petitioner had already earned that leave time she was and is entitled to be compensated for the same and the Respondent's refusal to so compensate Petitioner would appear to constitute the taking of Petitioner's property without due process of law.

79. Petitioner's attorney Samuel H. Long, III, Esq., of Hickory, North Carolina, has rendered valuable assistance to her in this and related proceedings necessitated by Petitioner's dismissal. Because this matter is not yet concluded the undersigned did not direct Petitioner's attorney to submit a fee affidavit, but it would be appropriate for the State Personnel Commission to request one and to include a recommended award of attorney fees as a part of its decision in this case.

WHEREFORE, BASED UPON THE FOREGOING FINDINGS OF FACT THE UNDERSIGNED CONCLUDES:

1. The undersigned Administrative Law Judge and the Office of Administrative Hearings have jurisdiction over this case by virtue of N.C.G.S. 126 and G.S. 150(b).

2. The applicable substantive statute in this case is N.C.G.S. 126-30 and the undersigned's decision is restricted to that statute.

3. Respondent Catawba County and the Catawba County Department of Social Services failed to meet its burden of proof on any element of the showings necessary under G.S. 126-30 to justify the dismissal of Petitioner.

4. Petitioner did not submit false or misleading information to Respondent in order to secure employment with Catawba County. Whether or not Petitioner was a dues-paying member of ACSW when she applied to Catawba County, or whether or not Petitioner was then recognized by ACSW as being entitled to claim ACSW certification status was not a matter which was significantly related to the job responsibilities of the position for which Petitioner was employed. Even if there was from the perspective of NASW or ACSW some technical error in Petitioner's claim of ACSW certification status in 1989, Petitioner's claim of ACSW certification was not knowingly or willfully falsely made.

5. Petitioner is entitled to reinstatement as an employee of Respondent in the same or a comparable position or commensurate damages, back pay (including all, across the board, annual, and merit pay increases which Petitioner could have received had she been employed since her dismissal, payment for her lost benefits including her accrued leave, and reasonable attorney fees for her lawyer).

WHEREFORE, BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The undersigned Administrative Law Judge makes this Recommended Decision for the Petitioner.

1. That Petitioner be reinstated to her former or a comparable position or given appropriate compensatory damages for her prospective wage losses if she is not so reinstated.

2. That Petitioner be paid for her lost wages, her lost benefits (including leave and such pay increases as have been available to Catawba County employees since Petitioner's dismissal, and payment of her reasonable attorney fees).

This the 29th day of April, 1994.

Robert Roosevelt Reilly
Administrative Law Judge presiding

NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, sub-chapters and sections are optional subdivisions to be used by agencies when appropriate.

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

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1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Auctioneers	4
4	Commerce	Barber Examiners	6
5	Correction	Certified Public Accountant Examiners	8
6	Council of State	Chiropractic Examiners	10
7	Cultural Resources	General Contractors	12
8	Elections	Cosmetic Art Examiners	14
9	Governor	Dental Examiners	16
10	Human Resources	Dietetics/Nutrition	17
11	Insurance	Electrical Contractors	18
12	Justice	Electrolysis	19
13	Labor	Foresters	20
14A	Crime Control & Public Safety	Geologists	21
15A	Environment, Health, and Natural Resources	Hearing Aid Dealers and Fitters	22
16	Public Education	Landscape Architects	26
17	Revenue	Landscape Contractors	28
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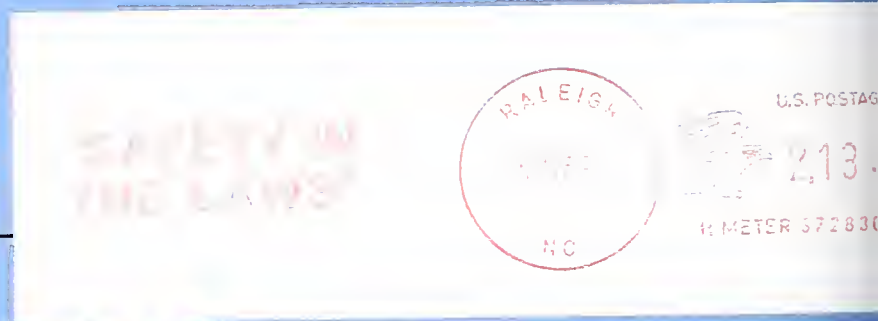
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